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Supplement RR-1

WAR CONTRACTS PRICE ADJUSTMENT BOARD

WASHINGTON

RENEGOTIATION REGULATIONS

for fiscal years ending after June 30, 1943

July 1, 1944

[Mailed ————, 1944]

SUMMARY OF IMPORTANT AMENDMENTS

The amendments made by this revision are summarized below. The principal changes are:

1. **Agricultural Commodity Exemption.** See paragraph 344.2 (2) for a statement of the interpretation and application of this exemption. Paragraph 844 contains a list of agricultural commodities determined to be exempt.

2. **Statement to the Contractor.** Paragraph 752.2 (3) has been amended to alter the requirements concerning financial comparisons to be included in the Statement to the Contractor (see especially subdivisions (vi) and (vii) of that paragraph). Paragraph 752.3 relating to the Statement to the Contractor when the statutory determination has not yet been made has been amended by the addition of subdivisions (3) and (4).

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulati through Revision 1.
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6.
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7.

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

PUBLIC DISTRIBUTION

The Renegotiation Regulations are available to the public in loose leaf form through the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. For particulars see R R 128.

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included *immediately* in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

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Filing Instructions—Revision RR-7—Continued

REMOVE OLD PAGES	INSERT NEW PAGES		SUMMARY OF CHANGES
301—302	301—302		Change in Table of Contents for Chapter III.
325	325—326		Insertion of new paragraph 324 containing provisions relating to exclusion from consideration of exempt contracts.
341—344	341—343B	(1)	Addition of text concerning exclusion from consideration of exempt contracts.
		(2)	Revision of subdivision (2) to insert new material relating to interpretation and application of agricultural commodity exemption.
351—352	351—352		Addition of text concerning exclusion from consideration of exempt contracts.
383—384	383—383B		Changes in paragraph 381.4 (1) and (3) to include interpretation of method of accounting.
777F—778	777F—778	(1)	Revision of paragraph 752.2 (3) to modify requirements concerning financial information in Statement to Contractor.
		(2)	Addition of subdivisions (3) and (4) to paragraph 752.3 relating to Statement to the Contractor when statutory determination has not yet been made.
801—802	801—802		Change in Table of Contents for Chapter VIII.
847—848	847—849	(1)	Correction of text in paragraph 841.
		(2)	Insertion of paragraph 844 containing a list of exempted agricultural commodities.
--------	1001—1057		Insertion of the new Index for the Renegotiation Regulations.

★When you have filed these pages, place this instruction letter at the back of your binder.

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Army	W, O
Navy	N
Maritime	M
Lend-Lease	L

Careful analysis of shipments classified as follows will be necessary to ascertain that ultimate payment was made by one of the nine "Departments" specified in the Renegotiation Act.

	Probable Classification	
	Predominantly Renegotiable	*Predominantly Exempt*
Office of Economic Warfare		E
Canadian Division		D
War Food Administration		A
National Housing Agency		H
Petroleum Administration for War		P
Office of Defense Transportation		T
Office of War Utilities		U
Office of Rubber Director	R, F	
WPB Office of Operations Vice Chairman	B, G, J, K	
WPB Facilities Bureau	F	
WPB Office of Civilian Requirements	S	V
Special Purpose	AM, FC, PX, X-1, MRO	WH, RO, SO

The most expeditious method of classifying shipments of these types would appear to be through an analysis of purchase orders, either by customers or by typical months, on the basis of "major program identification symbols". (See pages 1 to 4 of WPB pamphlet referred to in subparagraph 4 above.) The same type of analysis is also suggested for companies using customer-furnished materials inasmuch as orders received by them are required to carry the "major program identification symbol".

(6) The segregation of sales for manufacturers of wood products, textiles, chemicals, foods, tobacco products, and printing and publishing items usually can be accomplished most easily through an analysis in terms of end-use orders by customers. PD25A applications to the WPB will provide information useful for this purpose. End-use symbols are still used by companies not operating under "CMP".

323. Segregation with Respect to Contracts with RFC Subsidiaries. In connection with prime contracts between a contractor and Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, a segregation of sales and allocation of costs is necessary in order that excessive profits, if any, attributable to such contracts may be computed. (See paragraph 502.5 and note to article 4 of the Standard Form of Agreement, Form I paragraph 741.1 requiring repayment of such profits to the RFC Price Adjustment Board.)

324. Segregation and Exclusion of Exempt Contracts. Sales and costs allocable to any contract or portion thereof which is exempt

from renegotiation under subsection (i) (1) of the 1943 Act, or which is exempted from renegotiation under subsection (i) (4) of the 1943 Act, shall be entirely excluded from consideration in determining whether excessive profits have been realized and the amount thereof. However, sales allocable to such contracts shall not be excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6) of the 1943 Act.

[The next page is 331.]

Section 4

MANDATORY EXEMPTIONS AND EXCLUSIONS FROM RENEGOTIATION

340. Scope of Section. The preceding section deals with the general interpretation of the coverage of the Renegotiation Act of 1943 and with the meaning of the terms "contract" and "subcontract" as used in the Act. The Act contains various specific exemptions and exclusions of mandatory character, which are found in subsections (i) and (c) (6) of the Act. These exemptions and exclusions will be outlined in this Section. Permissive exemptions are covered by the succeeding Section 5 of this Chapter. Exempt contracts are excluded from consideration in determining whether excessive profits have been realized and the amount thereof, but are not excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6). (See paragraph 324.)

341. The Mandatory Exemptions.

(1) Contracts and subcontracts with other Governmental agencies are exempted by subsection (i) (1) (A). (See paragraph 343.)

(2) Contracts and subcontracts for certain raw materials are exempted by subsection (i) (1) (B). (See paragraph 344.)

(3) Contracts and subcontracts for agricultural commodities are exempted by subsection (i) (1) (C). (See paragraph 344.2.)

(4) Contracts or subcontracts with tax-exempt charitable, religious and educational institutions are exempted by subsection (i) (1) (D). (See paragraph 345.)

(5) Construction contracts awarded as a result of competitive bidding are exempted by subsection (i) (1) (E). (See paragraph 346.)

(6) Subcontracts under exempt contracts and subcontracts are exempted by subsection (i) (1) (F). (See paragraph 347.)

342. Authority to Interpret.

342.1 Statutory Provision. Subsection (i) (2) of the Regenotiation Act of 1943 provides:

> "(2) The Board is authorized by regulation to interpret and apply the exemptions provided for in paragraph (1) (A), (B), (C), (E), and (F) . . ."

342.2 Scope of Authority. The authority to interpret covers all of the mandatory exemptions except the exemption of tax-exempt charitable, religious and educational institutions. (Subparagraph (i) (1) (D) of the 1943 Act; paragraph 345.)

343. Contracts and Subcontracts with Other Governmental Agencies.

343.1 Statutory Exemption. Subsection (i) (1) (A) of the 1943 Act provides that it shall not apply to—

"(A) any contract by a Department with any other department, bureau, agency, or governmental corporation of the United States or with any Territory, possession, or State, or any agency thereof or with any foreign government or any agency thereof;"

343.2 Interpretation and Application of Exemption. The War Contracts Board has adopted the following interpretation:

(1) Under this provision of the Act no contract between one of the Departments and any other federal, local or foreign government agency is subject to renegotiation. A municipal corporation, whether acting in a proprietary or governmental capacity, is considered to be an agency of a State for the purposes of this exemption.

(2) Contracts between such other agencies or governmental corporations and private contractors, and subcontracts thereunder, are likewise not subject to renegotiation, except in those instances where the agency or governmental corporation is acting as a direct agent for a Department. In these instances, the contract is deemed to be with the Department for which the agency or governmental corporation is acting as direct agent, and not with the agency or governmental corporation, and accordingly, if otherwise subject to renegotiation, is not exempted.

(3) Certain of the agencies and governmental corporations referred to sometimes place orders called "pool" orders. Under this type of order the agency or corporation orders large quantities of a particular item from a manufacturer. Before delivery under this order the manufacturer may sell all or a portion of the items to a Department or to a Departmental contractor or subcontractor and the order of the governmental corporation or agency is reduced to the extent of these purchases by others. In such cases the sales by the manufacturer to a Department or to a Departmental contractor or subcontractor are not exempt from renegotiation.

344. Contracts and Subcontracts for Certain Raw Materials and Agricultural Commodities.

344.1 Raw Materials.

(1) *Statutory Exemption.* Subsection (i) (1) (B) of the 1943 Act provides that it shall not apply to—

"(B) any contract or subcontract for the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use;"

(2) *Interpretation and Application of Exemption.* In determining whether or not a particular product is an "exempted product" under the exemption in subsection (i) (1) (B) of the Act, the following principles shall govern—

(a) *Exempted Products.* The phrase "other mineral or natural deposit" shall be interpreted to include only mineral or natural deposits of a wasting or depletable character similar to products "of a mine, oil

or gas well". Accordingly, water, sea water and air, and products derived therefrom, are not considered to be other mineral or natural deposits within the meaning of the Act, and contracts or subcontracts therefor, or for products derived therefrom, shall be subject to renegotiation.

(b) *State at Which Exemption Terminates.* In general a product will be considered to be an exempted product until it has arrived at its dispersal point, i. e., the point at which a substantial proportion of the product is used by the ultimate consumer, or by industries other than the industry of origin. The industry of origin includes not only the primary industry of extraction or severance, but also any processing, refining or treatment directly supplementing its extraction or severance or to produce one or more of the chemical elements or compounds present in it in the state in which it may be found in abundance in nature; but excludes other processing, refining or treatment to produce various end products for the ultimate consumer, or a substantial variety of products which vary materially in size, shape or content from the original product.

(c) *Combination of Several Materials.* Where substantial quantities of two or more materials or ingredients are combined to produce a product for industrial use, the product resulting from such combination is considered to be non-exempt, unless the other material or materials are used as a catalyst, carrying agent or in some other subordinate capacity in connection with processing, refining or treatment of the principal product which is in the course of preparation for its first industrial use.

(d) *Different Processes.* Where a product is made in substantial quantities by two or more different processes, one of which would result in the exemption of the product under the above tests and the other would result in its inclusion, such a product will be considered to be renegotiable only where made by a process which would result in its inclusion.

(e) *By-Products.* Where a process for making a product or material subject to renegotiation under the above tests also produces by-products, such by-products shall be treated as subject to renegotiation since any benefits resulting from use or sale of such by-products operate in substance to reduce the cost of the principal product. The principle of the preceding sentence is inapplicable to by-products which would otherwise be exempt under this paragraph (2). In the case of by-products resulting from processes principally designed to produce an "exempted product" under the above tests, such by-products shall be treated as "exempted products" if they are not further processed, refined or treated. If further processing, refining or treatment of such by-products takes place, the status of the ultimate product resulting will be determined in accordance with the general principles set forth above.

(3) A list of products which, subject to the foregoing interpretation are considered exempt, is set forth in paragraph 841.

344.2 Agricultural Commodities.

(1) *Statutory Exemption.* Subsection (i) (1) (C) of the 1943 Act provides that it shall not apply to—

"(C) any contract or subcontract for an agricultural commodity in its raw or natural state, or if the commodity is not customarily sold or has not an established market in its raw or natural state, in the first form or state, beyond the raw or natural state, in which it is customarily sold or in which it has an established market. The term 'agricultural commodity' as used herein shall include but shall not be limited to—

"(i) commodities resulting from the cultivation of the soil such as grains of all kinds, fruits, nuts, vegetables, hay, straw, cotton, tobacco, sugar cane, and sugar beets;

"(ii) natural resins, saps and gums of trees;

"(iii) animals such as cattle, hogs, poultry, and sheep, fish and other marine life, and the produce of live animals, such as wool, eggs, milk and cream;"

(2) *Interpretation and Application of Exemption.*

(a) *Applicability.* This provision of the 1943 Act is retroactive as if it were a part of the Renegotiation Act on the date of its enactment, April 28, 1942.

(b) *Interpretation.* The purpose of this provision is to exempt from renegotiation farmers, fruit growers, livestock raisers, fishermen and other basic producers of agriculture commodities and those who trade in such products or handle or transport them without processing them; it is not intended to exempt canners, processors, manufacturers and others who acquire products of this type from the basic producer and process them to a higher form or state. In order to qualify for exemption the product contracted for must be an agricultural commodity in its raw or natural state, or if such a commodity is not customarily sold or does not have an established market in its raw or natural state in the first form or state beyond the raw or natural state in which it is customarily sold or in which it has an established market.

(c) *Application.* A commodity will be deemed to be an agricultural commodity in its raw or natural state only so long as it has not undergone some process of treatment or fabrication. In the case of fruits, vegetables and other like products this state does not ordinarily extend beyond the state in which such products are harvested. In the case of livestock, it terminates at the time the animal is slaughtered. Where an agricultural commodity is not customarily sold or does not have an established market in its raw or natural state as above defined and is no longer in such state the exempt status of such commodity will terminate with the state in which the commodity is first customarily sold or has an established market, and, with the exception of the produce of live animals which are specifically exempted, the exemption will not apply to any derivative products which are derived from such commodity in the state in which it is first sold, whether as a result of division, separation or further treatment or processing. For the purposes of determining whether an agricultural commodity is customarily sold or has an established market, regard will be given to the entire field in which such commodity is produced or marketed rather than to sectional or local practices; and varieties, types or classes of the commodity will be disregarded. Profits or losses

from sales of agricultural commodities in their exempt form or state, including sales of futures in such commodities, are excluded from consideration in renegotiation. The War Contracts Price Adjustment Board has determined the form or state at which the exemption terminates in the case of each of the agricultural commodities set forth in paragraph 844 and will continue to determine and publish from time to time additions to this list.

344.3 Cost Allowance for Raw Materials and Agricultural Commodities in the Case of Integrated Producers.

(1) *Statutory Provision.* Subsection (i) (3) of the Renegotiation Act of 1943 provides, in part, as follows:

> "(3) In the case of a contractor or subcontractor who produces or acquires the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, and processes,

[The next page is 345.]

Section 5

PERMISSIVE EXEMPTIONS FROM RENEGOTIATION

350. Scope of Section. The preceding Section deals with mandatory exemptions and exclusions from the operation of the Renegotiation Act of 1943. The Act contains certain provisions authorizing the War Contracts Board, or persons to whom its authority shall be delegated, to exempt other contracts and subcontracts from the operation of the Act. This Section will deal with these permissive exemptions. Such exempted contracts are excluded from consideration in determining whether excessive profits have been realized and the amount thereof, but are not excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6). (See paragraph 324.)

351. Contracts and Subcontracts to be Performed Outside of the United States.

351.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(A) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska."

351.2 Exemption.

(1) Each contract or subcontract to be performed outside the territorial limits of the continental United States, outside the territories of Alaska and Hawaii, outside the Panama Canal Zone, and outside the other territories and island possessions of the United States shall be exempt from the provisions of the Renegotiation Act of 1943 unless it shall be determined by the War Contracts Board or by any authority to whom power to exempt individual contracts under subsection (1) (4) (A) of the 1943 Act has been or may be delegated or redelegated;

(a) that administrative difficulties do not make impracticable the renegotiation of such contract or subcontract,

(b) that the procurement program of the United States in foreign countries will not be adversely affected by such renegotiation, and

(c) that such renegotiation will not otherwise be contrary to the interests of the United States.

(2) In determining whether the procurement program of the United States in foreign countries or the interests of the United States generally will be adversely affected by such renegotiation, it is considered desirable that representatives of the Department of State of the United States be consulted, if practicable; such consultation shall not, however, be essential to the valid renegotiation of any contractor or subcontractor.

(3) Such determination may be made at any time whether before or after the execution of the contract or subcontract and whether or not it contains a renegotiation clause.

352. **Contracts and Subcontracts Where Profits Determinable When Price Established.**

352.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(B) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;"

352.2 **Exemption.** In the opinion of the War Contracts Board the profits from contracts and subcontracts for the purchase or lease of any interest in real estate can be determined with reasonable certainty when the contract price is established, and such contracts and subcontracts are accordingly exempted from the provisions of the Renegotiation Act of 1943. (See paragraph 335.1.) For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation by railroad, motor vehicle, or air, and communications and subcontracts thereunder, see paragraph 842.

353. **When Contract Provisions Adequate to Prevent Excessive Profits.**

353.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(C) any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits."

354. **Contracts and Subcontracts for Standard Commercial Articles.**

354.1 **Statutory Authority.**

(1) Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

> "(7) The term 'standard commercial article' means an article—

Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code were decreased by reason of omitting from gross income (or by reason of the application of the provisions of section 3806 (a) of the Internal Revenue Code with respect to) that portion of the excessive profits for the renegotiated year which is equal to the amount of the gross renegotiation rebate. The amount by which the gross renegotiation rebate for the renegotiated year exceeds the amount of the contractor's or subcontractor's Federal tax benefit from the renegotiation for such year shall be the amount of the net renegotiation rebate for such year."

381.4 Profit, Cost Allocation and Allowance—General.

(1) *Profit.* The term "profits derived from contracts with the departments and subcontracts" is defined by the Act as the excess of the amount received or accrued under contracts and subcontracts over the costs paid or incurred with respect thereto. The term "costs" includes selling, general and administrative expenses. In connection with renegotiation on an over-all fiscal-year basis income received or accrued and items of cost paid or incurred will be considered as having been received or accrued or paid or incurred in the fiscal year to which such items are to be attributed in accordance with the method of accounting employed by the contractor or subcontractor in keeping his books. The method of accounting employed in determining the net income of the contractor or subcontractor for Federal income tax purposes shall be deemed to be the method of accounting employed by him in keeping his books. When the contractor requests that renegotiation be conducted on a completed contract basis, receipts and accruals and costs paid or incurred will be determined in accordance with the method agreed upon in connection with the granting of such request.

(2) *Allocation of Cost.* In general the costs paid or incurred with respect to renegotiable contracts will be those costs allocated thereto by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If, in the opinion of the War Contracts Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the reports or statements filed for the purpose of renegotiation, costs shall be determined in accordance with such method as in the opinion of the Board properly reflects such costs. No item of cost shall be charged to any contract or subcontract or used in any manner in determining costs to the extent that such item is not properly chargeable to such contracts or subcontracts.

(3) *Tax Deductions.* Costs allocable to renegotiable business shall be determined in accordance with the principles set forth above. Where the full amount of an item of cost is allocable to renegotiable business, it shall be allowed in the amount estimated by the War Contracts Board, or any agency to which its functions are delegated, to be allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code. No such item of cost shall be allowed in an amount less than or in excess of that which is estimated to be deductible

or excludible from income under the Internal Revenue Code, and all items of cost shall be attributed to the fiscal year in which they are allowable in the determination of taxable income under said Code. Where only a portion of an item of cost is allocable to renegotiable business, the War Contracts Board, or any agency to which its functions have been delegated, shall estimate the total amount allowable to the contractor, as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code and the portion of this estimated amount which is allocable to renegotiable business in accordance with the principles set forth above shall be allowed as a cost of renegotiable business. Where it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are either high or low on a comparative basis, this circumstance shall be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of the profit adjustment to be required of the contractor.

382. Salaries, Wages and Other Compensation.

382.1 Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in paragraph 381.4.

382.2 Allowances.

(1) Under Section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable". In determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for *reasonable* salaries for such partners as are *active* in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 Wage and Salary Stabilization.

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of

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1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

[The next page is 385.]

(3) Summary of the Relevant Facts.

(a) Financial Comparisons.

(i) There shall be made part of this statement comparative financial statements of the contractor which may be in the form of exhibits attached to the statement. If exhibits are used, they should be described and referred to in this part of the statement.

(ii) Comparative balance sheets prepared from those furnished by the contractor, as of the end of the fiscal year 1936 and of each fiscal year thereafter up to and including the fiscal year under review, shall be included.

(iii) Comparative income statements for the same fiscal periods shall be included.

(iv) The statements shall be supplemented by such statistical data related to the fiscal periods as may be deemed pertinent to the renegotiation.

(v) Any disallowance (or additional allowance) as compared with costs shown on the contractor's books shall be indicated.

(vi) The financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted in the discretion of the Department giving a statement furnished after a determination by agreement. In such case, the statement should refer to Exhibit A to the renegotiation agreement (see paragraph 741.3) and also to the contractors annual earnings before taxes for the fiscal year 1936 and for each fiscal year thereafter up to and including the fiscal year under review, to the extent that such information is available and pertinent. When the statement is furnished after a determination by agreement, documentary information furnished by the contractor and properly identified, relating to the financial comparison referred to in subparagraphs (ii) and (iii) above may be incorporated by reference.

(vii) In the case of a statement furnished after a determination by agreement or order, the financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted to the extent information therefor is not made available to the renegotiating officials by the contractor.

(b) Other Facts Related to the Determination.

The statutory factors required to be taken into consideration by subsection (a) (4) (A) of the Renegotiation Act of 1943 must receive consideration and the basic facts related thereto set forth, whether favorable or unfavorable to the contractor. The basic facts will be those resulting from consideration of the data submitted or assembled for the purpose of the renegotiation. Any other facts considered and pertinent to the consideration of the determination shall also be set forth.

(4) Reasons for the Determination.

A statement shall be made of the reasons for the determination in the light of all of the facts and factors referred to in the foregoing portions of the statement, indicating generally the relative significance and importance of such facts and factors.

752.3 **Substitute Paragraphs for the Statement Where Statutory Determination Has Not Yet Been Made.**

(1) Designation of the Contractor and Purpose of Statement

To .....
(Contractor's name and address)

Fiscal Year .....

You are hereby furnished with a statement of the facts and reasons upon which the opinion of (name of Board or Section) as to the amount of excessive profits for your fiscal year above set forth was based. Such statement is furnished for the purpose of assisting you in determining whether or not you wish to enter into an agreement providing for the elimination of such excessive profits. It is not a statutory statement as provided in subsection (c) (1) of the Renegotiation Act.

(2) Statement of Opinion of Excessive Profits.

In the opinion of (name of Board or Section) the amount of excessive profits received or accrued by you during such fiscal year under contracts or subcontracts subject to renegotiation is $ .....

(3) Summary of the Relevant Facts.

The instructions of paragraph 752.2 (3) applicable to a statement after a determination by agreement apply also to a statement where a statutory determination has not yet been made. In such case, Exhibit A to the renegotiation agreement may be referred to as a preliminary draft and submitted to the contractor in such form (see paragraph 752.2 (3) (vi)).

(4) Reasons for the Determination.

See paragraph 752.2(4).

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CHAPTER VIII

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Renegotiation Act. The provisions of such Act shall not apply to contracts and subcontracts for any of the exempted products.

(3) This determination is made under the principles set forth in paragraph 344.1 of the Renegotiation Regulations, including subdivision (2) (d) thereof. The products listed under paragraph 1 of this regulation are exempt only when they represent products of a mine, oil or gas well, or other mineral or natural deposit, or timber, which have not been processed, refined or treated beyond the first form or state suitable for industrial use and are not exempt if manufactured from raw materials which do not fall within the above description or which have at some prior stage been processed, refined or treated beyond such first form or state suitable for industrial use. For example, magnesium products derived from sea water, products manufactured from the atmosphere, secondary aluminum pigs and ingots, and other similar products are not considered exempted products.

(4) This determination applies to fiscal years ending after June 30, 1943.

(5) This regulation may be amended from time to time, revising, amending or supplementing the list of exempted products contained in paragraph 1 hereof.

JOSEPH M. DODGE,
Chairman, War Contracts Price Adjustment Board.

842. Public Utility Exemptions.

842.1 Public Utilities—Electric Power.

(1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(a) Any contract or subcontract with a public utility for the delivery of electric power of less than 1,000 kilowatts of contractual demand, except that if the actual demand was 1,000 kilowatts or more at any time during any particular fiscal year, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subparagraph (a).

(b) Any subcontract with a public utility for the delivery of electric power without regard to the contractual or actual demand, except that

(i) if such subcontract for electric power is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for electric power, or

(ii) if a Department has contracted to pay or guarantee the payment of amounts payable under such subcontract for electric power,

then in either such case such subcontract for electric power shall not be exempt from renegotiation by reason of this subparagraph (b).

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission or distribution of electric power shall not be exempt from renegotiation by reason of this paragraph 842.1 even though such contract or subcontract also calls for the delivery of electric power.

842.2 **Public Utilities—Gas.**

(1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(a) Any contract or subcontract with a public utility for the delivery of gas, except that if the amounts received or accrued under any such contract or subcontract during any particular fiscal year were $50,000. or more, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subparagraph (a). (If such fiscal year is a fractional part of twelve months, the $50,000. amount shall be reduced to the same fractional part thereof for the purposes of this subparagraph (a).)

(b) Any subcontract with a public utility for the delivery of gas without regard to the amounts received or accrued thereunder during any fiscal year, except that

(i) if such subcontract for gas is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for gas, or

(ii) if a Department has contracted to pay or guarantee the payment of amounts payable under such subcontract for gas,

then in either such case such subcontract for gas shall not be exempt from renegotiation by reason of this subparagraph (b).

(2) Amounts received or accrued under any contract or subcontract with a public utility with respect to the construction or installation of facilities for the generation, transmission or distribution of gas shall not be exempt from renegotiation by reason of this paragraph 842.2 even though such contract or subcontract also calls for the delivery of gas.

842.3 **Public Utilities—Transportation.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with common carriers to furnish transportation by railroad, motor vehicle or air, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

842.4 **Public Utilities—Communications.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with telephone, telegraph, cable and radio companies to furnish the service of transmitting messages, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for service of a comparable character.

842.5 **Subcontracts.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Subcontracts under any contracts or subcontracts exempted pursuant to paragraphs 842.1 through 842.4 inclusive.

842.6 **Scope of Exemptions.** All of the exemptions made under paragraphs 842.1 through 842.5 inclusive, apply to contracts and subcontracts of the specified classes and types, whether heretofore or hereafter made or performed, and whether or not they contain renegotiation provisions.

843. List of Exempted Foods.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for perishable foods under Section 403 (i) (4) (B) of the Renegotiation Act of 1943.

Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (4) (B) of the Renegotiation Act of 1943, concerning the exemption of contracts and subcontracts for certain perishable goods from renegotiation under the Renegotiation Act of 1943, the War Contracts Price Adjustment Board hereby determines that the foods set forth in the list attached hereto and designated as Exhibit "1" are perishable; and that, in the opinion of the Board, the profits under contracts and subcontracts for the purchase of such foods can be determined with reasonable certainty

when the contract price is established; and that contracts and subcontracts, heretofore or hereafter made, for the purchase of such foods are hereby declared to be exempt from all of the provisions of the Renegotiation Act of 1943.

EXHIBIT 1

Fresh Fruits:
- Apples
- Apricots
- Bananas
- Berries (blue and black)
- Cantaloupes
- Cherries
- Cranberries
- Grapes
- Grapefruit
- Honeydew Melons
- Lemons
- Limes
- Oranges
- Pears
- Peaches
- Plums
- Strawberries
- Tangerines
- Watermelons
- Other Miscellaneous Fresh Fruits

Fresh Vegetables:
- Asparagus
- Beans, Lima
- Beans, String
- Beets
- Broccoli
- Cauliflower
- Corn
- Cucumbers
- Egg Plant
- Endive (chicory)
- Greens (collards, etc.)
- Kale
- Lettuce
- Onions, Green
- Onions, Dry
- Parsley
- Parsnips
- Peas
- Peppers, Green
- Potatoes, Irish
- Potatoes, Sweet
- Radishes
- Spinach

Fresh Vegetables—continued
- Squash
- Tomatoes
- Turnips and Rutabagas
- Mushrooms
- Rhubarb
- Other Miscellaneous Fresh Vegetables

Dairy Products:
- Butter (except canned)
- Cheese (except processed canned)
- Ice Cream; ice cream mix in unsealed containers
- Fresh Fluid Milk
- Fresh Fluid Cream

Poultry:
- Chicken (except canned)
- Turkey (except canned)
- Other Poultry (except canned)

Meats:
- Beef (except canned and dehydrated)
- Pork (except canned and dehydrated)
- Lamb and Mutton (except canned and dehydrated)
- Veal (except canned and dehydrated)
- Smoked or Processed Meats (except canned and dehydrated)
- Other Meats (except canned and dehydrated)
- Lard and Lard Substitutes
- Offals (except canned and dehydrated)

Fish and Sea Foods:
- Fresh or Frozen
- Salted or Smoked (except canned)

Frozen Vegetables

Frozen Fruits

Bread and other Bakery Products (except biscuits, crackers, cracker meal, breakfast cereals, hard bread and zwieback)

Potato Chips

Compressed Yeast

Shell Eggs

Margarine

Any other perishable food of a similar nature whch may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Eggs	In the shell (raw)
Fiber Flax Straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

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SUPPLEMENT No. 2

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS
for fiscal years ending after June 30, 1943

July 15, 1944
[Mailed July 24, 1944]

SUMMARY OF IMPORTANT AMENDMENTS

1. Interest on Amounts Overdue. Article IV (Terms of Payment) in the Standard Form of Agreement has been amended to provide for the payment of interest in the event of default (see paragraphs 741.1 and 741.2 (5) (a) and (5) (b)).

2. Renegotiation on Completed Contract Basis. Paragraphs 301—303 have been revised.

3. Sales by the Departments. The 1943 Act has been interpreted not to apply to such sales (see paragraph 331.4).

4. Excess Inventories. Paragraph 344.4 has been amended.

5. Exemption of Construction Contracts. Paragraph 346.2 has been amended.

6. Sales of Capital Assets. Paragraph 352.2 (b) exempts sales of capital assets not in the ordinary course of business.

7. Conditional Allowance of Cost. A provision with respect thereto has been added at paragraph 381.4 (4).

8. Minimum Refund. Paragraph 406 has been revised to provide that the amount shall be determined *before* rather than *after* credit for state income taxes and that the provisions of the paragraph shall be inapplicable in certain cases.

9. R. F. C. Refunds. See paragraph 502.5.

10. Raw Materials Exemptions. Certain additions at paragraph 841.

11. Common-Carrier Exemptions. Contracts and subcontracts for transportation by inland or coastal waters and by pipe line and for freight forwarding are exempted in paragraph 842.3.

12. Exempted Agricultural Commodities. See paragraph 844 for additions.

13. Standard Commercial Articles Exemptions. See paragraph 845.

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included *immediately* in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
3—4	3—4	Changes in Table of Contents.
13—14	13—14	Modification of statement in third paragraph as to cost-plus-a-percentage-of-cost contract.
111—116	111—116	(1) In paragraph 103 (2) addition of "or a subcontract thereunder" after "Department". (2) Revision of last sentence of paragraph 107 and first sentence of paragraph 108.6.

OVER→

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
131—133	131—133	Deletion of the word "other" in second line of third sentence in paragraph 132.2 and addition of location of Board in paragraph 137.
211—214	211—214	Last sentence in paragraph 201.2 deleted; correction of detail and references in paragraph 203.2.
223—224	223—224	Paragraph 222.4 modified to restate availability of forms.
251—252	251—252	Grammatical changes in paragraphs 252 and 253.
301—304	301—304	Changes in Table of Contents for Chapter III.
311—314 (4 pages)	311—314 (6 pages)	Revised paragraphs 301 to 303 relating to fiscal year basis for renegotiation and exceptions.
323—324	323—324	Typographical corrections.
331—332	331—332	Addition of paragraph 331.4 relating to exemption of sales by the Departments.
335—338	335—338	(1) Addition of provision as to renegotiability of packaging materials and containers in paragraph 333.4 (1). (2) In paragraph 335.2 (3) the words "building or improvements" have been substituted for "property" and in paragraph 335.2 (4) the words "to such building or improvements" have been substituted for "thereto".
347—349 (3 pages)	347—348 (8 pages)	Amendment of subparagraphs (2) (b) (v), (2) (b) (vi), (2) (c) and (2) (d) of paragraph 344.4 relating to excess inventories; substitution and addition of new subparagraphs (a), (b) and (c) in paragraph 346.2 (1) relating to construction contracts awarded as a result of competitive bidding; deletion of "or subcontract" from second sentence in paragraph 346.2 (3); addition of sentence to paragraph 348.3 (4); and addition of subparagraph (5) to paragraph 348.3 relating to operation of $500,000 exemption.
351—355	351—355	(1) Modification of paragraph 352.2 relating to exemption of contracts and subcontracts where profits determinable when price established. (2) Addition of paragraph 353.2 relating to requests for exemption when contract provisions are adequate to prevent excessive profits. (3) Deletion of the words "by railroad, motor vehicle or air" from paragraphs 352.2 and 356.2; addition in paragraph 354.2 of reference to list of standard commercial article exemptions.
361—362	361—362	Addition at end of paragraph 363 of reference to forms.
383—383B	383—384	Addition of subparagraph (4) relating to conditional allowance of cost in paragraph 381.4; modification of subsection (1) of said paragraph for consistency with paragraphs 301 and 303.
387B—387E	387B—387E	(1) Change in last sentence of paragraph 385.2 concerning recognition of war losses. (2) Revision of paragraphs 387.1 and 387.2 (3) relating to allocation of advertising expenses. (3) Modification of last sentence of paragraph 389.1 relating to state taxes.
401—402	401—402	Change in Table of Contents.
413—423	413—423	(1) Change in title of paragraph 403.5 and addition of subparagraph (3) relating to adjustments for losses in other years. (2) Revision of paragraph 406 relating to minimum refunds.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(3) Changes in detail in paragraph 412.2. (4) Changes in detail and addition of references in paragraphs 422.1 and 422.7. (5) Addition to paragraph 423 of subparagraph (4) containing references.
441—442	441—442	Addition of reference in paragraph 440.
501	501—502	Change in Table of Contents for Chapter V.
513—518	513—519	(1) Modification of paragraph 502.5 relating to Article 4, Terms of Payment, in standard form of agreement, to include provisions with respect to refunds due RFC. (2) Addition in paragraph 506.2 of requirement as to contents of renegotiation agreement containing a forward pricing clause. (3) Addition of paragraph 506.4 relating to a clause to be used in certain cases where renegotiation is conducted on completed contract basis. (4) Addition of paragraph 506.5 relating to a clause covering conditional allowance of cost. (5) Revision of paragraph 507.3 relating to periodic refunds of future excessive profits. (6) Addition of subparagraph 3 in paragraph 508.2 relating to use of clearance agreements in lieu of clearance notices where renegotiation is conducted on a completed contract basis. (7) Addition to paragraph 508.3 of a provision requiring the use of alternative clauses in clearance agreements where renegotiation is conducted upon completed contract basis.
623—625	623—625	Additions to paragraphs 623, 625.2, 625.3 and 626.1 of references to appropriate forms for use in impasse procedure.
701—703	701—703	Change in Table of Contents for Chapter VII.
727—728 (2 pages)	727—728 (4 pages)	Addition of paragraph 702.3 containing form of inquiry concerning non-filing of mandatory financial statement, and paragraph 702.4 containing form of follow-up to letter of preliminary inquiry from Assignments & Statistics Branch.
731—732	731—732	Changes "and" to "or" in third line from bottom of page 731, paragraph 704.1.
759—760 (2 pages)	759—760 (4 pages)	(1) Addition of paragraph 723 containing a form of contractor's request for renegotiation on completed contract basis. (2) Addition of paragraph 725 containing a form of agreement extending time for completion of renegotiation.
765—768	765—767F	(1) Modification of last paragraph of Article 4, Terms of Payment, in the standard form of agreement (paragraph 741.1) and variations in Article 4 of the standard form (paragraph 741.2 (5) (a) and (5) (b)) changing acceleration provisions and providing for the payment of interest in the event of default. (2) Substitution of the word "for" in place of "during" in the fifth line of the fourth sentence of the article quoted in paragraph 741.2 (1). (3) Addition of subparagraph (6) in paragraph 741.2 relating to clause to be used in connection with renegotiation on a completed contract basis in certain cases.

OVER→

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(4) Substitution of "portion" for "proportion" in the authorized variation of Article 4 of the standard form of agreement in paragraph 741.2 (5) (a). (5) Addition of note at the end of the form of clearance notice (paragraph 742) setting forth special instructions in the case of subsidiary companies. (6) Addition of paragraphs 746 to 748 containing forms for use in impasse cases.
777F—778	777F—780	(1) Revision of paragraph 752.2 (4) relating to reasons for determinations in statements to be furnished contractors. (2) Addition of paragraph 753 setting forth a form for summary of financial data (spread sheet).
791—797 (7 pages)	791—797 (9 pages)	Members of War Contracts Price Adjustment Board listed in paragraph 791.2; substitution of Mr. W. John Kenney for Mr. Laird Bell as Chairman of Navy Price Adjustment Board noted in paragraph 792; addition of War Department Power Procurement Officer at end of paragraph 793.1; change in address of San Francisco Ordnance District in paragraph 793.2 (3); change in address and telephone number of War Production Board in paragraph 795; addition of paragraph 796 containing a list of War Department Patent Royalty Adjustment Offices.
801—802	801—802	Change in Table of Contents for Chapter VIII.
817—818	817—818	Reference to Military Appropriation Act, 1945, noted in paragraph 801.3 (2).
823—824	823—823B	Addition of paragraph 801.14 containing the text of Section 23 of the Military Appropriation Act, 1945.
827—828	827—827B	Modification of paragraph 802.2 (3) as provided by the Individual Income Tax Act of 1944; addition of footnote to paragraph 802.2 (3) setting forth the provisions of the Individual Income Tax Act of 1944 pertaining to its effective date in modifying section 3806 (b) of the Internal Revenue Code and quoting section 3806 (b) (3) of the Internal Revenue Code prior to its amendment by the Individual Income Tax Act of 1944.
845—846	845—846	Addition of the following raw materials to exemption list set forth in paragraph 841: chlorine and hydrogen produced directly by electrolysis of salt brine; Fuller's earth; monel ore and related materials; natural gasoline, casinghead gasoline, residue gas; and sodium aluminate.
847B—849	847B—850	(1) Addition of "pipe line" in second line of paragraph 842.3 (1); addition of subparagraphs 2 and 3 in paragraph 842.3 setting forth certain additional public utility transportation exemptions. (2) Addition of certain agricultural commodities to exemption list set forth in paragraph 844 as follows: beeswax, drugs (botanical), honey and pine gum. (3) Addition of paragraph 845 setting forth cer[illegible] standard commercial article exemptions, incl[illegible] iron scrap and steel scrap, refined sugar, tex[illegible] and leather transmission belting, etc.
859	859—860	Addition of paragraph 852.4 setting fort[illegible]

★When you have filed these pages, place this instruction letter [illegible] of the binder following the compilations for future reference.

RENEGOTIATION REGULATIONS

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3. The Case Amendment; Objections to Rigid Profit Limitations

Inevitably, the reports during the early months of 1942 indicating large profits from war contracts generated a strong public pressure to devise effective methods of profit control. In response to this sentiment, a number of Congressional committees began investigations. While these committees were examining the whole subject of war profits, on March 28, 1942, the day after the Second War Powers Act became law, the House of Representatives adopted an amendment to the Sixth Supplemental National Defense Appropriation Act, 1942, proposed by Mr. Case of South Dakota, and providing for the repayment by the contractor of all profits on war contracts in excess of 6% on sales before taxes.

This amendment precipitated immediate consideration of the entire subject. In hearings before a sub-committee of the Senate, the procurement agencies objected to this form of flat profit limitation. Their objections were based on the view that the control of profits is so integrally related to the control of costs and the prevention of inflation that the methods selected for profit control must be designed to promote these other objectives or at least not to defeat them; and further, that any rigid profit restriction would be inequitable as between contractors operating under different conditions.

In the war program, control of costs is as important as the control of profits. Increasing shortages in materials and manpower obviously require that our resources be used in the most efficient manner in order to obtain maximum production of war materials. All producers must operate at their highest efficiency and at the lowest cost possible under the circumstances, with the minimum waste of materials and labor. In peacetime, the pressure of competition requires this, but in war, when all facilities must be used and competition is largely inoperative, other measures must be taken. Profits must not depend upon costs. The weakness of the cost-plus-a-percentage-of-cost contract is that it puts a premium on high costs. Likewise, a very high excess profits tax tends to destroy the incentive to reduce costs.

The method adopted for profit control must contribute to the control of inflation. With more than half of the national income and production devoted to war purposes, the prices of war materials must be controlled. However, ordinary methods of price regulation would be extremely complex and difficult to administer. An excess profits tax or a flat profit limitation operates too late to serve in checking inflation, for they reach only what is left after all payments, costs and expenses of a producer are met. They therefore encourage a tendency towards increased costs and expenses. Accordingly, a flat profit limitation and excess profits taxes do not aid in controlling inflation.

Finally, in view of the widely divergent conditions among those engaged in war work, a rigid profit limitation does not achieve uniformity of treatment. In different industries the same volume of sales may require widely varying amounts of capital, skill, and work, depending on the rate of turnover and production, the nature of the article

or services, and similar factors. Even within an industry some contractors use Government facilities, some are Government-financed through advance payments, through loans or through cost-plus-fixed-fee contracts, while others use their own facilities and capital. Some products are standard articles using established skills; in others, much of the cost consists of fabricated parts which the contractor merely assembles. Many vital war items have been developed by inventive genius, original designing and mechanical skill. Frequently these developments were made available to other producers. In addition, many products require such precision in their manufacture that few contractors applied to their normal production. These wide diversities in circumstances make any uniform rate of profit necessarily inequitable.

4. Adoption of Renegotiation Act

Believing that a flat profit limitation would tend to promote inefficiency and impede the procurement program, and that in addition it would be grossly inequitable under the varied conditions of war production, the procurement agencies urged that no flat profit limit be adopted. Recognizing the force of these objections, the committee requested the procurement agencies to suggest a substitute method. The substitute proposed by these agencies in substance required contractors to furnish adequate data on actual costs and profits, after experience in production, and, upon request by the head of each Department procuring war materials, to bargain in good faith in the light of such data for adjusting the contract price. The proposal of the Departments was altered by Congress to make renegotiation compulsory. But as finally enacted, Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, did retain the flexible method of renegotiation as the means of profit control.

5. Development of Procedure for Renegotiation

The scope of the statute molded its administration. Under the Act renegotiation applied to all contracts and subcontracts (with specified exceptions), and could be required after the contract had been completed. These provisions seemed to render contractors liable, until three years after the war, to refund such part of any profits earned by them on their war contracts or subcontracts as the procuring agency might require. Since the prices of all contracts and subcontracts subject to the statute obviously could not, within any reasonable period, be examined and renegotiated individually, some other means had to be developed for disposing of this potential liability.

These circumstances led to the adoption of the method of overall renegotiation. This procedure permitted the contractor's profits on his entire war business to be examined for a specific fiscal period in order to reach an agreement for eliminating excessive profits on such contracts as a group and for that period. Besides reducing the administrative burden, this procedure had several other advantages. The consideration of all contracts and subcontracts as a group reduces cost accounting and allocations of cost to a minimum and saves time for both contractors and the Government, and the use of the fiscal period for renegotiation facilitated the use of the regular financial and account-

CHAPTER I

AUTHORITY AND ORGANIZATION FOR RENEGOTIATION

100. Scope of Chapter. This chapter deals in Section 1 with a summary of governing statutes. In Section 2, the applicability and arrangement of the Renegotiation Regulations and definitions used therein are set out. In Section 3, the organization of the War Contracts Price Adjustment Board and Departmental Price Adjustment Boards is discussed. Section 4 deals with the relation of the Renegotiation Act and the Royalty Adjustment Act concerning patents.

Section 1

SUMMARY OF RENEGOTIATION ACT OF 1943 AND RELATED STATUTES

101. Scope of Section. The summary of the Renegotiation Act of 1943 in this Section is designed to provide only a general outline of its structure and basic provisions. The detailed discussion of these provisions and of their interpretation and application is contained under the appropriate Sections of subsequent Chapters of these regulations.

102. War Contracts Price Adjustment Board. Subsection (d) of the 1943 Act creates the War Contracts Price Adjustment Board, which, for convenience, is referred to in these regulations as the War Contracts Board. Authority with respect to renegotiation is vested in this Board subject, however, to being delegated, in the Board's discretion, to the Secretaries of the Departments, with right of redelegation. The Board is composed of six members, one each from the War Department, the Navy Department, the Treasury, the Maritime Commission or the War Shipping Administration, the Reconstruction Finance Corporation, and the War Production Board. The War Contracts Board, its powers, duties and functions, and its authority to delegate its duties and functions are described more fully in paragraph 130 and following.

103. Coverage.

(1) In general, the 1943 Act applies to amounts received or accrued in fiscal years ending after June 30, 1943 under all contracts with the Departments and subcontracts, with the exceptions stated under paragraph 104 (subsection (c) (6) discussed in paragraph 348).

(2) Subcontracts include purchase orders or agreements to perform all or any part of the work, or to make or furnish any article, required for the performance of any other contract or subcontract but do not include any purchase order or agreement to furnish office supplies. A contract or arrangement to procure a contract with a Department or a subcontract thereunder is also a subcontract. Subcontracts are not limited to those made by a prime contractor but include those made by a subcontractor or sub-subcontractor down through the various tiers (subsection (a) (5), discussed in paragraph 333).

(3) The coverage of the 1943 Act is discussed in detail in Chapter III.

104. Exclusions and Exemptions.

104.1 Mandatory. The 1943 Act does not apply to

(1) Contracts between the Departments and other Governmental agencies (subsection (i) (1) (A), discussed in paragraph 343);

(2) Contracts or subcontracts for certain raw materials (subsection (i) (1) (B), discussed in paragraph 344);

(3) Contracts or subcontracts for agricultural commodities in a certain form or state (subsection (i) (1) (C), discussed in paragraph 344.2);

(4) Contracts or subcontracts with tax exempt charitable, religious or educational institutions (subsection (i) (1) (D), discussed in paragraph 345);

(5) Construction contracts with a Department let under competitive bidding (subsection (i) (1) (E), discussed in paragraph 346); or

(6) Subcontracts under prime contracts or other subcontracts of the types listed above which are exempted by subsection (i)(1) (subsection (i) (1) (F), discussed in paragraph 347).

104.2 Permissive. The War Contracts Board may, in its discretion, exempt from any or all of the provisions of the 1943 Act—

(1) Any contract or subcontract—

(a) To be performed outside of the continental United States or in Alaska (subsection (i) (4) (A), discussed in paragraph 351);

(b) Under which the profits can be determined with reasonable certainty when the contract price is established (subsection (i) (4) (B), discussed in paragraph 352);

(c) During a specified period or periods, to the extent that the contract provisions are adequate to prevent excessive profits (subsection (i) (4) (C), discussed in paragraph 353);

(d) For a standard commercial article if competitive conditions are such as will reasonably protect the Government (subsection (i) (4) (D), discussed in paragraph 354);

(e) If competitive conditions affecting the making of such contract or subcontract are likely to result in effective competition with respect to the contract price (subsection (i) (4) (E), discussed in paragraph 355); or

(2) Any subcontract or group of subcontracts, if it is not administratively feasible to segregate the renegotiable from the non-renegotiable business (subsection (i) (4) (F), discussed in paragraph 356).

The Board may make such exemptions by individual contracts or by general classes or types of contracts (subsection (i) (4), discussed in paragraph 357).

104.3 **Exemption Measured by Volume of Business.** Subsection (c) (6) provides that renegotiation shall not apply to any contractor or subcontractor unless the aggregate of the amounts received or accrued by the contractor or subcontractor (and all persons under the control of or controlling or under common control with the contractor or subcontractor) under contracts with the Departments and subcontracts, not including subcontracts for procuring contracts or subcontracts, exceed $500,000 (discussed in paragraph 348). In the case of subcontracts for the procuring of contracts or subcontracts, this figure is $25,000 (discussed in paragraph 348).

104.4 **Profits from Increment in Value of Excess Inventories.** The 1943 Act excludes from renegotiation that portion of the profits derived from contracts with the Departments and subcontracts attributable to the increment in value of excess inventories of certain raw materials and agricultural commodities (subsection (i) (3), discussed in paragraph 344.4).

105. Renegotiation Clauses in Contracts.

(1) The 1943 Act directs each Secretary to insert in each contract made by his Department, involving more than $100,000, terms under which the contractor agrees (a) to renegotiation, (b) to the withholding or recovery of excessive profits by the United States and (c) that he will insert like terms in all subcontracts made by him involving more than $100,000, and will require the subcontractor to insert like terms in contracts entered into by him. In the case of subcontracts for procuring contracts with the Departments these terms are to be placed in all such subcontracts for more than $25,000 (subsection (b), discussed in paragraph 331).

(2) The 1943 Act permits these terms to be incorporated in contracts and subcontracts by reference and each contract or subcontract is made subject to such terms whether or not they are incorporated either physically or by reference.

106. Determination of Excessive Profits.

106.1 **Costs.** In determining the profits from renegotiable business, the 1943 Act requires the War Contracts Board to allow costs determined in accordance with the method of cost accounting regularly employed by the contractor or if such method does not properly reflect such costs, the Board is authorized to prescribe the method under which such costs shall be determined. No item of cost shall be allowed which is unreasonable or which is not properly chargeable to the contract or subcontract. Notwithstanding these provisions, all items estimated to be allowable as deductions or exclusions for income tax purposes, to the extent they are allocable to renegotiable business, are to be allowed in determining excessive profits. State income taxes, to the extent they are attributable to the portion of the contractor's profits

determined to be excessive, however, are not allowable (subsection (a) (4) (B), discussed in paragraph 389).

106.2 **Unused Amortization Deduction.** The 1943 Act provides for the repayment by the United States to a contractor or subcontractor, without interest, of the amount of the net renegotiation rebate determined in accordance with procedures and principles set forth in the 1943 Act in the event of a recomputation of the amortization deduction provided for in section 124 (d) of the Internal Revenue Code (subsections (a) (4) (C) and (D), discussed in paragraph 383.2).

106.3 **Fair Cost Allowance in the Exempted State for Raw Materials and Agricultural Commodities in the Case of Integrated Producers.** In order to provide for equitable treatment of the integrated producer, the 1943 Act provides for the allowance of a fair amount of cost in the exempted state for certain raw materials and agricultural commodities in the case of integrated producers who produce or acquire such materials or commodities below such state and process them up to and beyond such state (subsection (i) (3), discussed in paragraph 344.3). In this connection attention is also directed to paragraph 104.4 supra, which in effect gives the contractor or subcontractor who acquires the exempted raw materials and agricultural commodities at the exempt stage the benefit of a similar special cost allowance to the extent that such products constitute excess inventory of such a contractor or subcontractor.

106.4 **Factors in Determining Excessive Profits.** The 1943 Act defines excessive profits to be the portion of the profits from the renegotiable business of the contractor or subcontractor which in the light of a list of factors set out in subsection (a) (4) (A) of the Act is determined to be excessive. These factors cover such matters as efficiency, costs, capital, risk, contribution to the war effort, character of business, and such other factors as the public interest and fair and equitable dealing may require (discussed fully in paragraph 408 and following).

107. **Renegotiation by Fiscal Years.** The 1943 Act applies to fiscal years ending after June 30, 1943, and requires that renegotiation be conducted on an overall fiscal year basis. Renegotiation may relate to any period other than a full fiscal year only with the consent of the contractor or subcontractor. The 1943 Act requires that renegotiation relate to the aggregate of the contractor's war business for the year unless the contractor requests and the War Contracts Board agrees to the renegotiation of separate contracts (subsection (c) (1), discussed in paragraphs 301-303).

108. **Renegotiation Procedure.**

108.1 **Mandatory Filing of Statement.** The 1943 Act requires every contractor or subcontractor not specifically exempted from renegotiation to file with the Board on or before the first day of the fourth month following the close of the fiscal year, or after the date of the enactment of the Revenue Act of 1943, whichever is the later, a statement containing such information as the Board may by regulations prescribe (subsection (c) (5) (A), discussed in paragraph 220 and

following). In addition to this statement, which is considered to be the statement for the purposes of the beginning of the statute of limitations, the War Contracts Board may require from the contractor or subcontractor any other data, information or records deemed desirable.

108.2 **Commencement of Renegotiation Proceedings.** The contractor or subcontractor will be given reasonable notice of the time and place for a conference with respect to renegotiation. The mailing of such notice by registered mail to the contractor or subcontractor constitutes the commencement of the renegotiation proceedings (subsection (c) (1), discussed in paragraph 241).

108.3 **Statute of Limitations.** Renegotiation proceedings must be commenced within twelve months from the close of the fiscal year or within twelve months of the date of the filing of the statement referred to in paragraph 108.1, **whichever is the later.** If such proceedings are not completed or if an agreement or order determining the amount of excessive profits is not made within one year from the commencement of the renegotiation proceedings, the liability of the contractor or subcontractor under the 1943 Act will be discharged. However, this one year period may be extended by mutual agreement (subsection (c) (3), discussed in paragraphs 362 and 363).

108.4 **Agreement or Order Determining Excessive Profits.** Upon the mailing of the notice and the commencement of the renegotiation, the Board will endeavor to make a final or other agreement with the contractor or subcontractor with respect to the elimination of excessive profits. If such an agreement is not made, the Act authorizes the Board to issue an order determining the amount of the excessive profits (subsection (c) (1), discussed in paragraph 620 and following).

108.5 **Statement to the Contractor or Subcontractor.** Whenever a determination is made as to the amount of excessive profits, whether by order or by agreement, the Board or its authorized agency, at the request of the contractor or subcontractor, will furnish a statement setting out the determination of excessive profits made in his case, the facts used as a basis therefor, and the reasons for such determination (subsection (c) (1), discussed in paragraph 520 and following).

108.6 **Eliminating Excessive Profits.** When the amount of excessive profits accumulated by a contractor has been determined, either by agreement or order, the War Contracts Board or its authorized agency shall eliminate such excessive profits. In eliminating such excessive profits there is allowed a credit for Federal income and excess profits taxes in accordance with Section 3806 of the Internal Revenue Code (subsection (c) (2), discussed in paragraph 440 and following).

109. Delegation and Review.

109.1 **Delegation.** The War Contracts Board may delegate in whole or in part any of its powers, functions or duties to the Secretary of a Department and such Secretary may, in turn, redelegate such powers, functions or duties to such officers or agencies of the United

States as he may designate. He may authorize successive redelegations (subsection (d) (4), discussed in paragraph 131.3).

109.2 Review by the War Contracts Board. The determination by any person or agency exercising the delegated powers of the War Contracts Board may be reviewed by the Board either upon its own motion, or, in its discretion, at the request of the contractor or subcontractor. The Board's determination may be less than, equal to, or greater than the determination reviewed. Unless the War Contracts Board upon its own motion initiates a review of the prior determination within sixty days from the date of such determination, or at the request of the contractor or subcontractor made within sixty days from the date of such determination initiates a review of such determination within sixty days from the date of such request, such determination becomes the determination of the War Contracts Board (subsection (d) (5), discussed in paragraphs 624 and 625).

110. Redetermination of Excessive Profits by The Tax Court of the United States. The Renegotiation Act provides that any contractor or subcontractor aggrieved by a unilateral determination of excessive profits by the War Contracts Board (under the Renegotiation Act of 1943), or by the Secretary of a Department (under the Renegotiation Act of 1942), may petition The Tax Court of the United States for a redetermination of such excessive profits. Proceedings before the Tax Court are de novo. The Court may find an amount of excessive profits less than, equal to, or greater than the amount found by the Board. The petition for a redetermination must be made to the Tax Court within ninety days after the entry of the order or the date of the enactment of the Revenue Act of 1943 (February 25, 1944), whichever is the later (subsection (e), discussed in paragraph 630 and following).

111. Applicability.

111.1 Applicability of the 1943 Act in General. In general, the provisions of the 1943 Act apply to all fiscal years ending after June 30, 1943. Prior fiscal years are covered by the Renegotiation Act of 1942 (Section 701 (d) of the Revenue Act of 1943 set forth in full in paragraph 801.13 and paragraphs 122.10 and 122.11).

111.2 Applicability in Special Cases. There are several exceptions to the general rule set forth in paragraph 111.1.

(1) Provisions of the 1943 Act made retroactive:

(a) Subsections (a) (4) (C) and (a) (4) (D) relating to the adjustment of excessive profits for any year on account of the recomputation of the amortization deduction (discussed in paragraph 383.2);

(b) Subsection (i) (3) which provides for a fair cost allowance in the exempted state for certain raw materials and agricultural commodities in the case of integrated producers and which excludes from renegotiation the profits realized because of the increment in value of excess inventories of raw materials and agricultural products acquired in the exempted state (discussed in paragraphs 344.3 and 344.4);

Section 3

ORGANIZATION AND FUNCTIONS OF THE PRICE ADJUSTMENT BOARDS AND SECTIONS

130. Statutory Authority. The authority and discretion to administer the Renegotiation Act of 1943 is conferred upon the War Contracts Board with power of delegation (see subsection (d) of the 1943 Act in paragraph 801.4).

131. War Contracts Price Adjustment Board.

131.1 Functions. The War Contracts Price Adjustment Board has authority to administer the Renegotiation Act of 1943, including authority over agreements, unilateral determinations of excessive profits and exemptions. The Board has 6 members, of whom 4 constitute a quorum, and the Board may act by a majority of a quorum.

131.2 Seal. The seal of the Board shall be judicially noticed. A facsimile is set forth below:

131.3 Delegations. The Board has power to delegate any of its authority to the Secretary of a Department, who may redelegate to such officers or agencies of the United States as he may designate, with right of redelegation. There is set forth below the organization for renegotiation in the various Departments having renegotiation authority. Delegations by the War Contracts Board to the Secretaries of the various Departments are set forth in paragraph 821.1.

131.4 Jurisdiction. The Board may, by regulation, or otherwise determine the character of cases to be conducted initially by the Board itself, those to be conducted by its officers or the officers utilized by it, and those to be conducted by the various officers and agencies to which the Board's powers have been delegated. (Subsection (d) (5) of the 1943 Act, see paragraph 801.4.) Renegotiation will initially be conducted by the Departments in all cases, except for instances, if any, in which the Board may determine otherwise. (See paragraph 200 and following.) The powers, duties and discretion of the Board to conduct renegotiation were delegated to the Secretaries of the Departments on February 26, 1944. (See paragraph 821.1.)

131.5 **Review by the Board.** The Board may, in its discretion, either upon its own motion or at the request of the contractor or subcontractor, review any determination by order made by any officer or agency to which its powers have been delegated. The Board's determination may be less than, equal to, or greater than the determination reviewed. (Subsection (d) (5) of the 1943 Act, see paragraph 801.4 and also Chapter VI, Section 2.)

132. **War Department Organization.**

132.1 **Organization and Functions of War Department Price Adjustment Board.** The Renegotiation Division has been established by the Commanding General, Army Service Forces, as a Staff Division under the supervision of the Director of Materiel. The War Department Price Adjustment Board has been organized within the Division. The Chairman and members of the Board are appointed by the Commanding General, Army Services Forces, with the approval of the Under Secretary of War. The Chairman serves also as Director of the Renegotiation Division.

132.2 **Organization and Functions of War Department Price Adjustment Sections.** There has been established a Price Adjustment Section in each of the Technical Services of the Army Service Forces and in the Army Air Forces. The Army Services Forces have Sections in the Technical Services of Chemical Warfare, Engineers, Ordnance, Quartermaster, Signal Corps, Surgeon General, and Transportation. With the exception of the Price Adjustment Section of Chemical Warfare, located in Baltimore, the main Sections of the Technical Services are located in Washington. Headquarters for renegotiation in the Army Air Forces are shared by Washington and Wright Field, Dayton, Ohio. District Price Adjustment Sections have been established by the Technical Services and the Army Air Forces at various procurement centers, and this decentralization allows renegotiation to be conducted close to the location of the company involved.

133. **Navy Department Organization.**

133.1 **Navy Price Adjustment Board.** The Secretary of the Navy has established the Navy Price Adjustment Board to conduct renegotiation under the supervision of the Chairman of the Board. The Board has four divisions located in Washington, New York, Chicago and San Francisco, respectively.

133.2 **Services and Sales Renegotiation Section.** In the Procurement Legal Division, Office of the Under Secretary of the Navy, there has been established a Services and Sales Renegotiation Section which specializes in the renegotiation of sales agents and brokers. This section has its headquarters in Washington and divisional offices in Washington, New York, Chicago and Los Angeles.

134. **Treasury Department Price Adjustment Board.** The Treasury Department has established the Treasury Department Price Adjustment Board in the Procurement Division. The office of the Board is located in Washington.

135. Maritime Commission Price Adjustment Board. The Maritime Commission has established the Price Adjustment Board of the Maritime Commission. The office of the Board is located in Washington.

136. War Shipping Administration Price Adjustment Board. The Administrator of the War Shipping Administration created a Price Adjustment Board within the War Shipping Administration and charged the Board with the responsibility of conducting renegotiations. The office of the Board has been established in New York City, since this location is in close proximity to the great majority of the contractors of the War Shipping Administration.

137. RFC Price Adjustment Board. The boards of directors of Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company have established the RFC Price Adjustment Board. The office of this Board is located in Washington, D. C.

138. Joint Price Adjustment Board. The Joint Price Adjustment Board has authority, delegated by the Secretaries, to adopt statements of purposes, principles, policies, and interpretations, under the Renegotiation Act of 1942. The Joint Price Adjustment Board has no authority with respect to renegotiation for fiscal years ending after June 30, 1943.

139. Addresses. Addresses of the various Price Adjustment Boards and Sections dealing with renegotiation under the Renegotiation Act of 1943 are set forth in paragraphs 791 and following.

[The next page is 141.]

CHAPTER II
PROCEDURE FOR RENEGOTIATION

200. **Scope of Chapter.** This Chapter II contains regulations and instructions dealing with procedural and formal matters, with particular reference to assignments for renegotiation, the cancellation of assignments, preliminary information, mandatory filing of financial statements and the preparation, conduct and completion of renegotiation.

Section 1
ASSIGNMENTS FOR RENEGOTIATION AND CANCELLATIONS

201. **In General.**

201.1 **Necessity for Assignment.** No Department or Service will conduct renegotiation proceedings with any contractor or subcontractor unless and until an assignment for that purpose has been issued on behalf of or is confirmed by the War Contracts Board. This provision is designed to promote orderly procedure through avoidance of duplication of activities as well as by assuring to the extent possible that renegotiation proceedings are conducted by the appropriate Department or Service. Notwithstanding the foregoing, in the absence of specific action by way of disaffirmance by the War Contracts Board, a renegotiation proceeding, conducted by a Department to which a general delegation of authority has been issued by the War Contracts Board, shall not be invalidated by reason of the fact that an assignment of the particular case had not been duly or properly issued. Assignments issued after the conclusion of a renegotiation proceeding shall be of the same force and effect as if issued at any time prior thereto.

201.2 **Effect of Assignment.** The issuance of an assignment shall evidence the authority and duty of the Department or Service to which the assignment is issued to conduct statutory renegotiation with the contractor thereby assigned on an overall basis with respect to the aggregate of the amounts received or accrued during the fiscal year to which the assignment relates, provided, however, that, upon request of the contractor, pursuant to subsection (c) (1) of the 1943 Act, the Department or Service to which the assignment is issued may, in its discretion, agree to renegotiate with respect to amounts received or accrued under one or more contracts or subcontracts.

201.3 **Effect of Assignments Issued on Behalf of the Joint Board.** All assignments for renegotiation heretofore or hereafter issued in the name of the Joint Price Adjustment Board, through the Assignments and Statistics Branch of the Renegotiation Division, A. S. F., are hereby ratified, approved and confirmed with the same force and effect as if they had been originally issued by the War Contracts Board.

201.4 **Authority in Assignment Matters.** The Assignments and Statistics Branch, Renegotiation Division, A. S. F., has been author-

ized by the War Contracts Board to act on its behalf in the issuance of assignments, reassignments, and cancellations of assignments. The Assignments and Statistics Branch will discharge its functions subject to such policies as may be established and directions given from time to time by the War Contracts Board but no assignment, reassignment or cancellation of assignment issued by the Assignments and Statistics Branch shall be deemed unauthorized or invalid unless specifically revoked by action of the War Contracts Board. The authority mentioned herein as conferred upon the Assignments and Statistics Branch is deemed to extend not only to the permanent staff of said Branch but also to persons who may from time to time be detailed by any Departmental Board to work with the staff of the Branch.

201.5 Control of Assignments. A system for the recording and control of assignments will be maintained by the Assignments and Statistics Branch. It will operate with relation to the number of individual contractors assigned, each company whether or not a subsidiary or affiliate of another being represented by a separate assignment and assignment number. Joint ventures will be represented by a single assignment; separate assignments will not be issued for the individual members of a joint venture unless they hold, independently of the joint venture, other contracts subject to renegotiation. Statistical reports of the final results of renegotiation will, however, be based on the number of completed agreements regardless of how many assignments may be represented thereby. As a part of the system established for the recording and control of assignments, the Departments and Services will use the forms appearing in paragraphs 705 and 706.

201.6 Communications. Communications relating to administrative matters in connection with assignments, reassignments and cancellation of assignments should be addressed to War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C.

202. Basis of Assignment.

202.1 In General. Assignments will ordinarily be made to the Department or Service believed to have the predominant interest in the assigned contractor's renegotiable business, but assignments will be made on the basis of industry or product classification in those cases where it is believed that such action will promote efficiency of renegotiation procedure. Assignments may also be determined by the existence of intercompany affiliations or transactions and, in exceptional instances, by considerations of geographic convenience.

202.2 Product Classification. The War Contracts Board recognizes that in many cases it is advantageous to assign concerns which produce the same or similar products to the same Department or Service. Assignments on the basis of product classification are authorized particularly with respect to concerns producing products as to which one or more of the Departments or Services have the principal overall procurement interest or have acquired specialized experience in

renegotiation. Departments and Services should suggest reassignment of contractors when, because of the nature of their products, it appears that efficiency of renegotiation procedure would be promoted thereby. Such reassignments should be suggested notwithstanding the fact that the predominant interest in the particular contractor's business may lie with the Department or Service suggesting the reassignment (see paragraph 205.1 and form in paragraph 703.3).

202.3 Brokers and Agents. Brokers and agents subject to renegotiation by virtue of subsection (a) (5) (B) of the 1943 Act and machine tool dealers will ordinarily be assigned to the Services and Sales Renegotiation Section, Procurement Legal Division, Office of the Under Secretary of the Navy, with the exception of those engaged in the sale of textiles and food stuffs, who will ordinarily be assigned to the Price Adjustment Section of The Quartermaster General.

203. Selection of Contractors for Assignment.

203.1 Contractors Previously Assigned. Generally contractors who were assigned for 1942 fiscal years have been assigned for 1943 fiscal years to the same Department or Service which held the 1942 assignment. Those assignments which were issued prior to the effective date of the 1943 Act on behalf of the Joint Board have been confirmed by the War Contracts Board. Such assignments are subject to reassignment on the basis of industry or product classification or because of substantial change in predominant interest.

203.2 Contractors Not Previously Assigned. In order that unnecessary assignments may be avoided, initial assignments will not ordinarily be made without the prior receipt and consideration by the Assignments and Statistics Branch on behalf of the War Contracts Board of the information required in the appropriate "Standard Form of Contractor's Report" (see paragraphs 222 and 701). Exceptions to this rule will be made at the request of any Agency authorized to conduct renegotiation upon an indication of urgency in point of time, lack of necessity for preliminary review, or other considerations deemed appropriate. Unless the required preliminary information is available through mandatory filing or otherwise, it will be obtained by the Assignments and Statistics Branch on behalf of the War Contracts Board by causing to be sent to the contractor a "Letter of Preliminary Inquiry" together with the appropriate "Standard Form of Contractor's Report" (see paragraphs 222, 701 and 702.1). In the event that the contractor fails to make satisfactory response within a reasonable time to the "Letter of Preliminary Inquiry," the case may be assigned for renegotiation to the Department or Service believed appropriate. Should the information required by the "Standard Form of Contractor's Report" be received by the War Contracts Board subsequent to the issuance of the assignment, the assignment may be reassigned or cancelled if such action be found by the War Contracts Board to be appropriate; otherwise, the information will be transmitted to the assignee Department or Service.

203.3 Identification of Contractors Not Previously Assigned. The identification of contractors not previously assigned will be accom-

plished principally through their filing mandatory financial statements in conformity with the requirements of the first sentence of subsection (c)(5)(A) of the 1943 Act (see paragraph 222). The War Contracts Board may use other sources of information. The Departments and Services may suggest to the War Contracts Board, by means of Form 101 (see paragraph 703.1), names of contractors to be considered for assignment at a time earlier than that at which the mandatory financial statements may be received. Such suggestions should be limited to cases as to which there is substantial reason to believe that early institution of renegotiation proceedings is advisable or required.

203.4 Reports as to Brokers and Agents. Information coming to the attention of a Department or Service indicating that commissions or other compensation may have been or might be paid or accrued to a broker or agent subject to renegotiation under subsection (a) (5) (B) of the 1943 Act or (a) (5) (ii) of the 1942 Act will be reported to the Services and Sales Renegotiation Section, Procurement Legal Division, Navy Department, Washington 25, D. C., and to the War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C. (see paragraph 202.3).

204. Form of Assignments. Assignments will be issued on Form 102 (shown in paragraph 703.2) or by endorsements on Form 101 (see paragraph 703.1) or by other written notification to the assignee Department or Service.

205. Reassignment of Cases.

205.1 When Cases Reassigned. The War Contracts Board will reassign a case to another Department or Service if it appears that efficiency of renegotiation procedure will be promoted thereby. Such reassignments may be based upon inter-company affiliations or transactions, substantial predominance of interest or the principle of assignment by product classification. Reassignments may be suggested by the Departments, Services, or other Agencies. The use of the form set forth at paragraph 703.3 is recommended for this purpose. Reassignments may also be initiated by the War Contracts Board or by the Assignments and Statistics Branch of its own motion. A case will not be withdrawn from any Department without that Department's approval except by express direction of the War Contracts Board, nor will a reassignment become effective if objection to such reassignment is filed in writing by a Department with the Assignments and Statistics Branch within 10 days following receipt of such reassignment unless such objection is overruled by action of the War Contracts Board. The Assignments and Statistics Branch may withdraw an assignment from a War Department Service without its approval.

205.2 Transfer of Information on Reassignments. Upon notice that a case has been reassigned, there will be transmitted directly to the Department or Service holding the reassignment all information obtained from the contractor relating to the fiscal period subject to renegotiation.

on or before the date specified in the 1943 Act, such contractor may file such report containing such information as he can feasibly supply, which in all cases shall include at least the contractor's balance sheet, profit and loss statement and surplus statement for his latest completed fiscal year and shall state in such report that the information not contained therein or such other information as the Department or such Branch may require, will be furnished within such period as the Department or such Branch may designate. In any such case the filing of such a statement on or before the date specified in the Act and its acceptance by such Department or such Branch shall constitute compliance by the contractor with the provisions of subsection (c) (5) (A).

222.2 **Time for Filing.** The mandatory financial statements hereby prescribed shall be filed on or before the first day of the fourth month following the close of the fiscal year of the contractor (or if such fiscal year had been closed on February 25, 1944, on or before the first day of June, 1944), whether or not any demand has been made by the War Contracts Board or by any person on its behalf.

222.3 **Place for Filing.** Except as stated herein, the mandatory financial statements hereby prescribed shall be filed in duplicate with the War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C. Where the contractor has received a "Letter of Preliminary Inquiry" (see paragraph 223) and a "Standard Form of Contractor's Report" from a renegotiating Agency, the mandatory financial statements hereby prescribed shall be filed in duplicate with that Agency. The renegotiating Agency will forward one copy to the War Contracts Board within sixty days after receipt of the Report by the Renegotiating Agency.

222.4 **Availability of Forms.** Copies of the forms above mentioned may be obtained upon request to the Assignments and Statistics Branch or to any of the Price Adjustment Boards or Sections of the several Departments authorized to conduct renegotiation proceedings.

222.5 **Effect of Filing Mandatory Financial Statements.** The filing of a mandatory financial statement in accordance with the provisions of this paragraph 222 will not relieve any contractor or subcontractor of the duty to furnish such other information, records or data which are determined by the War Contracts Board or its representatives to be necessary to carry out its responsibilities under the Act.

222.6 **Filing of Mandatory Financial Statements by Parent and Subsidiary Corporations on a Consolidated Basis.** Parent and subsidiary corporations which constitute an "affiliated group" as defined in subsection (d) of Section 141 of the Internal Revenue Code may satisfy the requirements for filing of mandatory financial statements under the first sentence of subsection (c) (5) (A) of the Renegotiation Act of 1943 by filing a "Standard Form of Contractor's Report" on a consolidated basis. When such a consolidated "Standard Form of Contractor's Report" is filed there shall also be filed a "Standard Form of Contractor's Report" for each subsidiary corporation (except as noted below) but any such subsidiary corporation report may be completed by writing thereon a statement that a consolidated report has

been filed by the parent company. Where any such subsidiary corporation has not received or accrued during the applicable period any amount whatever under renegotiable contracts with the Departments and subcontracts (i. e., contracts or subcontracts not exempt from renegotiation by contractual provision pursuant to subsection (i) or contracts or subcontracts which are not exempted under subsection (i) of the Renegotiation Act of 1943), no report need be filed by it.

223. Letter of Preliminary Inquiry.

223.1 Unassigned Contractors. The War Contracts Board, through the Assignments and Statistics Branch, may send to contractors and subcontractors who are identified by it as probably subject to renegotiation proceedings (excepting those who have been previously assigned) a "Letter of Preliminary Inquiry" (see paragraph 702.1). Such "Letter of Preliminary Inquiry" will require the recipient to file the appropriate "Standard Form of Contractor's Report" within 30 days from the date of the letter. The "Letter of Preliminary Inquiry", sent by the Assignments and Statistics Branch, will be to determine whether or not the contractor should be assigned for renegotiation and to what Department or Service, if any, such assignment should be made. The filing of the "Standard Form of Contractor's Report" will constitute compliance with the requirement for mandatory filing under paragraph 222, if filed within the time prescribed by the 1943 Act.

223.2 Assigned Contractors. The Departments and Services may send to contractors who have been assigned to them for 1943 renegotiation the "Letter of Preliminary Inquiry" and the appropriate Standard Form of Contractor's Report. In such cases, the filing of the Standard Form of Contractor's Report will constitute compliance with the requirements of mandatory filing under paragraph 222 if filed within the time prescribed by the 1943 Act, and, with respect to assigned cases, will enable a determination to be made as to whether further renegotiation proceedings will be necessary.

224. Contractor's Information and Work Sheet for Renegotiation. The War Contracts Board, through the Department or Service to which any contractor or subcontractor is assigned, may send to such contractor or subcontractor the form "Contractor's Information and Work Sheet for Renegotiation" (see paragraph 722). The contractor's work sheet will ordinarily be used to assist the contractor in preparing information where it is contemplated that formal renegotiation proceedings will be carried to conclusion.

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Section 5

COMPLETION OF RENEGOTIATION

250. Scope of Section. This section refers to the steps taken upon the completion of a renegotiation resulting in a voluntary agreement, to the administration of agreements and unilateral determinations, and to progress reports.

251. Preparation of Agreement. When a tentative settlement has been agreed upon, the Department conducting the renegotiation will promptly prepare a form of agreement (see Section 1 of Chapter V).

252. Preparation of Statement to Contractor. Section 2 of Chapter V deals with the furnishing of a statement to the contractor.

253. Administration of Agreements. Administration of voluntary agreements or of unilateral determinations by the Department to which the contractor was assigned for renegotiation is referred to in paragraph 509.

254. Progress Reports.

(1) The organization designated as the Assignments and Statistics Branch of the War Department Price Adjustment Board will be regarded by the War Contracts Board as the official source of information as to the Government's over-all progress of renegotiation. This Branch will in effect actually serve the War Contracts Board although constituted in the Renegotiation Division, Army Service Forces.

(2) The several Departmental Boards and Services will prepare and furnish to the Assignments and Statistics Branch as at the close of business each Friday the appropriate Weekly Progress Report (Form SPRA-O in the case of Departments, see paragraphs 751.1 and 751.2, and Form SPRA I in the case of Services, see paragraphs 751.3 and 751.4). On the basis of the information supplied in the Weekly Progress Reports of the several Departments, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Reports (Form SPRA I-BB) and Operations Reports (Form SPRA I-CC) and will furnish the same to the War Contracts Board and the Departmental Boards (see paragraphs 751.6 and 751.8). On the basis of the information supplied in the Weekly Progress Reports of the Services, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Reports (Form SPRA I-B, set forth in paragraph 751.5) and Operations Reports (Form SPRA I-C, set forth in paragraph 751.7).

255. Control of Documents.

(1) Renegotiation Agreements, Reports of Renegotiation, records, files, correspondence, memoranda and all other documents containing financial and business information pertaining to renegotiation with specific contractors are the property of the Government of the United States.

(2) Such documents are not to be distributed, nor their contents revealed, to any person having no legitimate right thereto.

(3) Upon transfer or separation from employment in renegotiation, or any other employment in which possession or custody of such documents is authorized, all personnel will return such documents to a responsible official.

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CHAPTER III

DETERMINATION OF RENEGOTIABLE BUSINESS AND COSTS

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CHAPTER III

DETERMINATION OF RENEGOTIABLE BUSINESS AND COSTS

300. Scope of Chapter. In order to determine on an over-all basis whether the profits received or accrued by a contractor under renegotiable contracts and subcontracts are excessive, it is necessary first to determine the amount of his renegotiable business and the profits thereon. This Chapter III deals with the principles and methods to be used for this purpose. Section 1 deals with the application of the fiscal year basis for renegotiation, and the exceptions to it. The general methods for segregating renegotiable business and applicable expenses from non-renegotiable business and applicable expenses are discussed in Section 2. Specific instructions as to what contracts and subcontracts are subject to renegotiation or are exempt are contained in Sections 3, 4, and 5. Limitations on commencement and completion of renegotiation are contained in Section 6 and termination of renegotiation is discussed in Section 7. Detailed instructions regarding the specific costs and expenses allowable against the renegotiable business of a contractor are stated in Section 8.

Section 1

FISCAL YEAR BASIS FOR RENEGOTIATION AND EXCEPTIONS

301. Fiscal Year Basis for Renegotiation.

301.1 Statutory Provisions. Subsection (c) (1) of the Renegotiation Act of 1943 provides in part:

> ". . . The Board shall exercise its powers with respect to the aggregate of the amounts received or accrued during the fiscal year (or such other period as may be fixed by mutual agreement) by a contractor or subcontractor under contracts with the Departments and subcontracts, and not separately with respect to amounts received or accrued under separate contracts with the Departments or subcontracts, except that the Board may exercise such powers separately with respect to amounts received or accrued by the contractor or subcontractor under any one or more separate contracts with the Departments or subcontracts at the request of the contractor or subcontractor."

301.2 Use of Fiscal Year Basis—In General.

(1) This provision requires the War Contracts Board to renegotiate on a fiscal year basis (or such other period as may be fixed by mutual agreement). It also requires that renegotiation be conducted upon an over-all basis unless the contractor or subcontractor requests, and the War Contracts Board agrees, that such renegotiation be conducted with respect to his contracts and subcontracts separately or as two or more groups.

(2) Generally, renegotiation will be conducted on the basis of the amounts received or accrued by a contractor from his renegotiable contracts and subcontracts for a past fiscal year. Under this method excessive profits are determined by examining the contractor's financial position and the profits from such contracts and subcontracts taken as a whole for a particular fiscal year rather than by separate analysis of each contract or subcontract. This avoids problems of allocation of costs and profits, as between each contract and subcontract, allows the contractor to offset the results of one contract against another and simplifies administration.

301.3 Renegotiation on a Completed Contract Fiscal Year Basis—Construction Contracts.

(1) Contractors having construction contracts or subcontracts may have used a completed contract method of accounting for Federal income tax purposes with respect to some or all of such contracts or subcontracts. With respect to the contracts and subcontracts for which the completed contract method of accounting was used, such method of accounting will be followed for all purposes of the Renegotiation Act and the regulations and interpretations promulgated thereunder. In the case of any contract or subcontract for which the completed contract method of accounting is followed, all amounts received or accrued thereunder and all costs paid or incurred with respect thereto will be treated as having been received or accrued or paid or incurred within the fiscal year in which the contract or subcontract was completed.

(2) A contractor who has used the completed contract method of accounting for Federal income tax purposes with respect to some of his construction contracts and subcontracts and who desires the use of such method with respect to his other construction contracts and subcontracts, or a contractor who has not used such method of accounting for Federal income tax purposes with respect to any of his contracts or subcontracts, may, nevertheless, request that the completed contract method of accounting be used for the purposes of renegotiation with respect to all of his construction contracts and subcontracts completed or terminated within the fiscal year. If such request is approved by the Department to which the contractor has been assigned, the contractor will be deemed to have adopted the completed contract method of accounting with respect to such contracts and subcontracts, for the purposes of renegotiation. The form to be used in making such a request is set forth in paragraph 723. The Department concerned will not approve such request unless (a) it appears that the effect of granting such a request would not be inconsistent with the general purposes of the Act, (b) the contractor agrees to all the terms and conditions stated in paragraph 723, and (c) the request relates to all construction contracts and subcontracts completed or terminated within the fiscal year being renegotiated. If such request is approved, the Renegotiation Act, and the regulations and interpretations promulgated thereunder other than those dealing with the allowance of tax credits, will be applied in all respects to

such construction contracts and subcontracts and the profits derived therefrom as though, with respect to them, the contractor had used the completed contract basis of accounting in keeping his books and in making his Federal income tax return. The $500,000 fiscal-year exemption provided in subsection (c) (6) of the Renegotiation Act, the interpretation relating to the $500,000 "floor" as set forth in paragraph 348.3, as well as all other provisions of the 1943 Act, will be applied in like manner. The contracts or subcontracts renegotiated on the completed contract basis are subject to such separate treatment as may be required because of the different types of contracts involved (such as fixed-price, cost-plus-fixed fee, price-minus contracts, contracts subject to contractual or statutory fixed profit limitations and contracts providing for redetermination or revision of the contract price during the life of the contracts). In this connection, attention is directed to paragraphs 306 and 307.

301.4 Renegotiation of Completed or Terminated Contracts on a Completed Contract Basis Where a Contractor Is out of War Business. Completed contract renegotiation under the principles set forth in paragraphs 301.3 and 301.6 may also be granted upon the request of a contractor or subcontractor although certain amounts received or accrued under one or more of the contracts or subcontracts involved have been included in renegotiation for a prior fiscal year, provided that any amounts received or accrued and costs paid or incurred which have been included in any previous renegotiations shall be excluded from consideration in the completed contract renegotiation. No such request shall be granted, however, unless (a) only a limited number of contracts and subcontracts are involved, (b) all such contracts and subcontracts have been completed or terminated at the time renegotiation takes place, and (c) the contractor or subcontractor then holds no additional contracts or subcontracts subject to renegotiation. If more than five contracts or subcontracts are involved in such a case, express approval of the War Contracts Board must be obtained before granting the contractor's request. In all such cases the final agreement must contain appropriate provision for the protection of the interest of the Government in the event the contractor enters into contracts or subcontracts for additional renegotiable business at some subsequent time during the latest fiscal period of the contractor with which the completed contract renegotiation is concerned.

301.5 Ascertainment of Date of Completion of Contracts. For the purposes of this paragraph 301 a contract shall be regarded as having been completed when the performance by the contractor thereunder has been completed unless there are exceptional circumstances or contractual provisions which justify or require the application of a different principle in a particular case.

301.6 Contracts to Be Included in a Completed Contract Renegotiation. Subject to the provisions of subparagraph 301.3 (2) with respect to separate treatment of different types of contracts, contracts and subcontracts to be renegotiated on a completed contract basis will be renegotiated as a group when completed within a given fiscal year, but contracts completed in one fiscal year may not be grouped with contracts completed in a different fiscal year. In the event that

contracts to be renegotiated on a completed contract basis are uncompleted at the termination date of the 1943 Act, the Department to which the contractor is assigned for renegotiation will be guided by the provisions of paragraph 302 as well as by the principles of subsection (h) of the 1943 Act (see paragraph 370 and following).

301.7 **Renegotiation of Related Contracts.** Contracts and subcontracts under which architectural, engineering or management services or any combination thereof are rendered and which are related to a contract or subcontract which is renegotiable on a completed contract basis under these Regulations may also be renegotiated on a completed contract basis.

302. **Differing Accounting Methods.** Should there be employed a method of computing profit in a renegotiation for any fiscal year which is different from that employed in renegotiation for the fiscal year immediately preceding, the Department conducting the renegotiation must make adequate provision in the agreement or otherwise so that renegotiable business will not escape renegotiation because of the change. The interest of the Government in connection with the year which is the subject of renegotiation and for future years must also be protected and generally no item of cost which has been allowed in a previous renegotiation should be allowed in any subsequent renegotiation. These principles apply to renegotiation conducted with respect to a fiscal year, to a period other than a fiscal year or on a contract-by-contract basis. Under ordinary circumstances a contractor will be renegotiated on the same basis as that used for the determination of his income for Federal income tax purposes and, where a contractor requests and is allowed to renegotiate on some other basis, he will be required to agree that future renegotiations will be conducted on the same basis unless the War Contracts Board approves a variation of this proceeding by reason of unusual circumstances in a particular case.

303. **Long-Term Ship Construction Contracts and Certain Types of Utility Contracts.** The renegotiation of long-term ship construction contracts and of certain classes of utility contracts which are subject to renegotiation by reason of their particular size or character (see paragraph 842) may with the consent of the contractor be conducted on such basis as, in the opinion of the Department conducting the renegotiation, will be most appropriate for the determination of excessive profits. In determining such basis, consideration will be given to the basis of renegotiation used by such Department in prior renegotiations where the contractor concerned has been renegotiated for a prior period or with respect to other contracts.

304. **Cost-Plus-Fixed-Fee Contracts.**

304.1 **Separate Consideration.** The financial and other data upon which the renegotiation is based must clearly reflect the financial results of performance of cost-plus-fixed-fee contracts and subcontracts separately from the financial results of performance of other contracts and subcontracts. Accordingly, the amounts received or accrued and costs paid or incurred on such cost-plus-fixed-fee contracts must be segregated from such amounts relating to other renegotiable

contracts and subcontracts, so that an appropriate appraisal of the profits from such cost-plus-fixed-fee contracts and subcontracts can be made.

305. **Joint Venture Contracts.** Where two or more parties enter into an arrangement for the performance jointly of one or more projects, the combination resulting from such arrangement is commonly referred to as a "joint venture." Such a joint venture is regarded as an entity which, with respect to its contracts or subcontracts within the scope of the Renegotiation Act of 1943, is a "contractor" or "subcontractor" within the meaning of the Act. Therefore, the joint venture is renegotiated with respect to its renegotiable contracts and subcontracts without regard to other contracts or subcontracts which may be held by the members of the joint venture.

306. **Treatment of Contracts with Fixed Profit Limitations.**

306.1 **Included in Renegotiation.** Certain contracts with various Departments, particularly the Navy Department, Maritime Commission, and War Shipping Administration, are subject to provisions limiting the contractor's profit thereunder to a fixed percentage of the total sales or contract prices or costs within the scope of such limitation. Such contracts will be included in renegotiation but the agreement made therein shall reserve to the Department having this independent duty, the corresponding right to determine and collect profits, if any, in excess of such limitation.

306.2 **Method of Renegotiation in Such Cases.** The contractor's sales or contract prices and costs under contracts subject to such profit limitation shall be included with the sales or contract prices and costs of his other renegotiable business, unless segregation shall be deemed necessary by a Department. Where the contract has not been finally audited the contractor shall be allowed to set up and shall be required to maintain an actual reserve to cover his liability in connection with such profit limitation in an amount by which the contractor's profit within the scope of such limitation is estimated to exceed the maximum allowable profit thereunder. The provision for the establishment of the reserve will be treated as a reduction in net profits rather than an increase in costs or a reduction of sales. This reserve should be allowed on the condition that the contractor will report to the Department conducting the renegotiation and will pay to the United States as excessive profits in renegotiation so much of such reserve as he is not required to repay under such profit limitation and as shall be required to be so paid by such Department.

307. **Treatment of Contracts with Price Adjustment Provisions.**

307.1 **Subject to Renegotiation.** Certain contracts provide for escalation, redetermination or revision of the contract price during the life of the contract. These contracts are subject to renegotiation unless otherwise exempted, but their provisions necessitate special treatment. Except for certain shipbuilding contracts referred to in paragraph 307.3, the method of handling certain situations arising in connection with such contracts on renegotiation is discussed in paragraph 307.2.

307.2 **Method of Renegotiation.**

(1) Upon over-all renegotiation involving such contracts, if the price for the period under review is expected to be retroactively reduced after the completion of the renegotiation proceedings, then in determining excessive profits the contractor should be permitted to set up a reasonable reserve to cover the estimated refund under the contract for the period under review. Similarly, if the contract clause is expected to result in a retroactive upward revision of the price for the period under review, an allowance therefor should be made on the basis of reasonable estimates and included in the renegotiable income of the contractor.

(2) In making such estimates the contracting officer should be consulted. Whenever the retroactive adjustment under such clauses will substantially affect the contractor's over-all profits for the period covered by renegotiation, production experience will generally be sufficient to permit a reasonable estimate of the amount of the probable refund or additional payment.

(3) Where the retroactive effect of the price adjustment clause would materially affect the basis of the settlement, but cannot be reasonably estimated, the matter may in certain instances be handled by disregarding the operation of the clause in over-all renegotiation and by amending the contract provision to make any retroactive adjustment inapplicable to the period covered by renegotiation, as is the case under the more recent forms of such price adjustment clauses.

(4) This paragraph 307.2 does not cover the method of handling certain shipbuilding contracts referred to in paragraph 307.3 below.

307.3 **Certain Shipbuilding Contracts.** Certain shipbuilding contracts with the Navy Department and Maritime Commission provide for escalation, price savings and for redetermination or revision of the contract price during the life of the contract and the Department with which the contract is made is charged with the duty of auditing and determining the amount to be paid the contractor for work performed under such contracts. Furthermore, under regulations of the Maritime Commission when two or more vessels are constructed under separate contracts as a single undertaking the profit or loss resulting

322.5 **Applicable Basis for Percentages of Allocation.** When sales have been classified according to paragraph 322.4 such sales may be segregated by applying ratios or percentages based upon general or specific factors such as:

(1) The recognized or estimated extent to which certain products are being used for war purposes as shown by governmental, trade association or other reports.

(2) The recognized or estimated extent to which certain industries (to whom the contractor sells) may be engaged in war business.

(3) Percentages developed through spot check of the end use of the products for one or more months of the year. The selection of the month or months should be made only after a thorough review of the equity of the choice by the Department and by the contractor.

322.6 **Use of Reports to Government.**

(1) The great majority of companies to be renegotiated for the year 1943 used one or more of the so-called "controlled materials" (steel, copper, and aluminum in various types and shapes) as primary raw materials, secondary materials, or in the form of component parts.

(2) Because the war demand for these materials greatly exceeded the supply, their distribution was closely regulated and they could be obtained only with proper authorization by the War Production Board:

(a) During the fourth quarter 1942, under the Production Requirements Plan ("PRP")

(b) During the first quarter 1943, under "PRP"

(c) During the second quarter 1943, under either "PRP" or the Controlled Materials Plan ("CMP")

(d) During the third and fourth quarters 1943, under "CMP"

(3) In order to secure the necessary authorization, all companies (except those using customer-furnished materials) were required to file with the War Production Board applications showing, among other things, shipments and orders analyzed by Preference Ratings and by End Use or Claimant Agencies (Army, Navy, Aircraft, Maritime, Lend-Lease, etc.). Inasmuch as Section 35 (A) of the United States Criminal Code, 18 U. S. C., Sec. 80, makes it a criminal offense to make a willfully false statement or representation to any department or agency of the United States as to any matter within its jurisdiction, the data contained in these applications can be considered reliable. Material deviations from representations in WPB reports in sales segregations for renegotiation purposes should be accepted only when extraordinary circumstances exist, and such circumstances must be explained fully in renegotiation reports to the Department or agency conducting the renegotiation.

(4) Names of "claimant agencies" and their symbols are set forth in the WPB pamphlet "Controlled Materials Plan Major Identification Symbols" dated January 3, 1944. Copies of this pamphlet can be obtained by writing War Production Board, Controller Division, Washington 25, D. C.

(5) "CMP" applications and reports to the WPB provide a ready basis for segregating 1943 sales for purposes of renegotiation.

(a) For manufacturers of Class A products (military items such as aircraft, ammunition, artillery, tanks, ships, electronic, etc., and their major component parts), Section A of WPB Form 732 shows analysis of shipments by claimant agencies.

For	*Refer to*
1st Q 1943	WPB732 Budget Bureau No. 12-RO27.2
2nd Q 1943	WPB732 Budget Bureau No. 12-RO27.5
3rd Q 1943	WPB732 Budget Bureau No. 12-RO27.8
4th Q 1943	WPB732 Budget Bureau No. 12-RO27.10
1st Q 1944	WPB732 Budget Bureau No. 12-RO27.11

Note: Separate reports usually were filed for each plant or division. To avoid omission of part of the company's operations, all WPB732 forms should be scrutinized.

Because of the character of products manufactured, Class A producers will in almost every instance be found to be fully renegotiable. In rare cases, however, certain sales by Class A producers will prove to be exempt from renegotiation because ultimate payment was not made by one of the nine "Departments" specified in the Renegotiation Act.

(b) For manufacturers of Class B products (minor military items such as bulldozers, component parts such as pumps included in a number of military items, and non-military items), forms CMP-4B and WPB732 show analyses of shipments by claimant agencies.

For	*Refer to*
4th Q 1942	Sec. E of CMP-4B Budget Bureau No. 12-R780-42
1st Q 1943	Sec. C of CMP-4B Budget Bureau No. 12-R780.1 Sec. A of WPB732 Budget Bureau No. 12-RO27.2
2nd Q 1943	Sec. A of CMP-4B Budget Bureau No. 12-R780.5 Sec. A of WPB732 Budget Bureau No. 12-RO27.5
3d Q 1943	Sec. A of CMP-4B Budget Bureau No. 12-R780.6 Sec. A of WPB732 Budget Bureau No. 12-RO27.8
4th Q 1943	Sec. A of CMP-4B Budget Bureau No. 12-R780.7 Sec. A of WPB732 Budget Bureau No. 12-RO27.10
1st Q 1944	Sec. A of CMP-4B Budget Bureau No. 12-R780.8 Sec. A of WPB732 Budget Bureau No. 12-RO27.11

Note: A separate CMP-4B form was made out for each B product. Separate WPB732 forms also were prepared for each plant or division. The CMP-4B and WPB732 forms contain, for renegotiation purposes, essentially the same information; therefore, use whichever is the later.

With possible rare exceptions, shipments classified as follows should be treated as renegotiable:

Section 3

CONTRACTS AND SUBCONTRACTS WITHIN THE SCOPE OF THE 1943 ACT

330. Scope of Section. This and the following Sections 4 and 5 deal with the contracts and subcontracts subject to renegotiation. This Section 3 discusses the kinds of prime contracts and subcontracts which are within the 1943 Act, aside from exemptions, and the following Sections cover the exemptions (mandatory and permissive, respectively) from renegotiation.

331. General Coverage of 1943 Act.

331.1 Statutory Provision. Subsection (c) of the 1943 Act confers the basic authority to renegotiate, and paragraph (6) of subsection (c), which deals with its application, provides that, with certain exceptions, it shall apply "to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943, and whether or not such contracts or subcontracts contain the provisions required under subsection (b)."

331.2 Contracts Without Renegotiation Clauses. Subsection (b) of the 1943 Act requires the insertion of renegotiation provisions in certain contracts and subcontracts and provides that these provisions may be incorporated by reference to such subsection. However, both subsections (b) and (c) provide that renegotiation under subsection (c) applies whether or not the contract or subcontract contains such provisions unless such contract or subcontract is specifically excluded or exempted.

331.3 Exemptions and Exclusions. Subsections (c) (6) and (i) of the 1943 Act provide for various exclusions and exemptions of contracts and subcontracts from renegotiation. These are discussed in detail in Sections 4 and 5 of this Chapter.

331.4 Interpretation. The 1943 Act is construed to be inapplicable to sales by the Departments and contracts therefor.

332. Contracts with the Departments.

332.1 General. Subject to the exemptions contained in the 1943 Act, all contracts made by the War and Navy Departments, the Maritime Commission, the War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Rubber Reserve Company, and Metals Reserve Company are subject to renegotiation. Contracts of the Treasury Department subject to renegotiation include—

(1) Contracts placed under Section 201 of Title II of the First War Powers Act, 1941, 55 Stat. 839. These are principally lend-lease contracts which may be identified by the symbols "DA-TPS" preceding the contract number.

(2) Contracts for strategic and critical materials placed under the authority of the Act of June 7, 1939, 53 Stat. 811. Such contracts made after March 1, 1943 may be identified by the symbols "SCM-TPS" preceding the contract number.

(3) Contracts for supplies for refugee relief under the Red Cross program, placed under the authority contained in Title II of the Third Supplemental National Defense Appropriation Act, 1942, 55 Stat. 817, or in section 40 of the Emergency Relief Appropriation Act, fiscal year 1941, 54 Stat. 627, and Title I of the Second Deficiency Appropriation Act, 1942, approved July 2, 1942. Such contracts may be identified by the symbols "TRR" preceding the contract number.

332.2 **Treasury Procurement Schedule of Supplies.** Contracts of the Procurement Division of the Treasury Department of the type regularly made by it in the ordinary course of business prior to the war period, as such, are not subject to renegotiation unless negotiated under authority contained in Title II of the First War Powers Act, 1941. However, purchase orders, issued by other Departments under General Schedule of Supplies Contracts, which are entered into by the Procurement Division of the Treasury Department on behalf of all departments and establishments of the Government, are considered as subject to the provisions of the 1943 Act. Purchase orders issued by the Treasury Department itself under such contracts are also considered as subject to the provisions of the 1943 Act if such purchases are for lend-lease or for the Red Cross program.

332.3 **Lend-Lease Contracts.** All so-called lend-lease contracts entered into by any of the Departments having renegotiation authority are subject to the provisions of the 1943 Act. However, lend-lease contracts entered into by any other department or agency of the Government are not subject to renegotiation under existing law.

332.4 **Cost-Plus-Fixed-Fee Contracts.** Cost-plus-fixed-fee contracts are subject to renegotiation unless otherwise exempt. The treatment of such contracts in renegotiation is discussed in paragraph 304.

332.5 **Management Fee Contracts.** Contracts providing for a management fee are subject to renegotiation.

332.6 **Army Post Exchange and Army Exchange Service Contracts.** Contracts with Army Exchanges for the sale of items carried by such exchanges for resale are not subject to statutory renegotiation. Contracts entered into by the Army Exchange Service (through the intermediary of the Quartermaster General but without involving the use of appropriated funds) are not subject to statutory renegotiation. These conclusions are based on opinions of the Judge Advocate General of the War Department respectively dated February 20, 1943, and August 13, 1943, relating to the 1942 Act.

332.7 **Navy Ship's Service Stores Contracts.** Ship's service activities, including ship's service stores, are conducted by Navy personnel but their operations do not involve Navy Department funds. Their contracts are not Navy Department contracts and are not subject to renegotiation. Ship's stores, as distinguished from ship's service stores, are operated with Navy Department funds. Their contracts are Navy Department contracts and are subject to renegotiation.

333.4 General Effect of Interpretation.

(1) In general it is intended to include as subject to statutory renegotiation the sale of all machinery, equipment, materials and other articles which contribute directly to the actual production of an end item or an article incorporated therein, in connection with the physical handling of the item from the time of entry of the component materials to departure of the item from the plant in question and to include all machinery which similarly contributed directly to the actual production of other machinery so used. Packaging materials and containers are included only when they are furnished in connection with end-products delivered to a Department.

(2) It is intended to exclude the sale of articles which contribute only indirectly to the actual manufacturing process, such as products used for general plant maintenance, including fuel and equipment to produce light, heat and general power requirements and such as equipment needed for general office maintenance, including all types of office machinery and supplies, and such as safety equipment and clothing.

(3) It is not intended to exclude from renegotiation any articles sold to a contractor when the items are to be ultimately resold to a Department either as end products or as component parts included therein. However, subcontracts to furnish office supplies are specifically excluded from the definition of subcontract. Therefore, subcontracts for office supplies, although such office supplies are ultimately sold to a Department, are not subject to renegotiation. Office supplies are interpreted to include paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples and other items of consumable character, as well as related items of relatively short life and minor cost, such as pens, pen holders, pencils, blotter pads and calendars; they do not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, waste baskets, filing cases, typewriters and calculating, recording, reproducing and dictating machines.

333.5 Allocation of Sales. Sales of such machinery and equipment are allocated on the basis of the use thereof (i.e., for renegotiable or non-renegotiable production); and when the extent of the use can not be readily established, such sales are considered renegotiable in substantially the same proportion as the production of the purchasers of such machinery and equipment is subject to renegotiation. (See Section 2 of Chapter III, including paragraph 322.3.)

334. Specific Interpretations of "Subcontract".

334.1 Standard Commercial Articles. The term "standard commercial article" is defined by subsection (a) (7) of the 1943 Act which provides in subsection (i) that agreements for such articles may be exempted by the War Contracts Board under certain conditions. (See paragraph 354.) Unless agreements for standard commercial articles are exempted pursuant to such subsection, their renegotiability will be determined by the same tests applied to agreements for equipment specially fabricated for war uses or purposes.

334.2 OPA Price Ceilings. The fact that articles are sold under price ceilings fixed by the Office of Price Administration does

not exclude the sale of such articles from renegotiation. Excessive profits have been realized within OPA price ceilings. The increase in volume of sales of such articles may lower costs to such extent that excessive profits are realized.

334.3 Patent Licenses as Subcontracts. Patent licenses for processes or inventions required in performing contracts with the Departments and subcontracts are subcontracts as defined in subsection (a) (5) (A) of the 1943 Act subject to statutory renegotiation (unless exempted), whether or not the licensor furnishes or agrees to furnish any technical or other service to the licensee and without regard to the time that the license agreement was made. Such patent licenses are not subcontracts under subsection (a) (5) (B) of the 1943 Act.

334.4 Subcontracts for Office Supplies. The definition of "subcontract" as contained in subsection (a) (5) (A) of the 1943 Act specifically excludes therefrom agreements or purchase orders for office supplies. (Also see paragraph 333.4.)

335. Contracts and Subcontracts Involving Real Property.

335.1 Contracts and Subcontracts for Existing Real Property.

(1) Action taken with respect to exempting contracts and subcontracts for certain interests in real property is referred to in paragraph 352.2.

(2) Moreover, aside from such exemption, the statutory definition of "subcontract" is construed to exclude agreements for the purchase of real property by contractors and subcontractors. Since it refers to the making or furnishing of any "article" which in turn is defined to mean any "material . . . or other personal property", the definition implies that agreements for the acquisition of real property are not subcontracts.

(3) The exemptions and exclusions discussed in this paragraph govern agreements for existing real property, but do not apply to agreements for fixtures or for improvements to or construction of real property which are discussed in the following paragraph.

335.2 Agreements for Fixtures, Construction and Improvements on Real Property.

(1) Where an agreement is for work or articles which become real property in the course of its performance, as distinguished from existing real property, the principles stated in this paragraph govern.

(2) Where an agreement to sell, furnish or install machinery, equipment, materials or other personal property would otherwise constitute a renegotiable contract or subcontract, the fact that such property is to be installed in a building or otherwise affixed to real estate and will be treated as real property for some purposes does not exclude the agreement from renegotiation.

(3) Where a contract for the construction of a building or improvements on or to real property is made by a Department, or if not made by a Department the Government acting through a Department is to obtain title to such building or improvements either immedi-

ately or ultimately (such as contracts for plant and facilities), then such contract is renegotiable unless exempted. Likewise all subcontracts under such a renegotiable contract for furnishing services, or articles, such as building materials and structural steel, which are personal property when furnished, but which became real property during the course of construction, are renegotiable unless exempted, and so are subcontracts for furnishing any machinery and equipment installed in the building.

(4) Where, however, an agreement is for the construction of a building or improvement on or to real property for a contractor or subcontractor for the purpose of performing a renegotiable contract or subcontract and the Government acting through a Department is not to acquire title to such building or improvements, either immediately or ultimately, then except as provided in (2) above, such agreement and subcontracts thereunder are not subject to renegotiation even though the improvements may be covered by Certificates of Necessity.

(5) In determining whether a subcontract for an item is renegotiable under subparagraph (2) or not renegotiable under subparagraph (4), it is helpful to consider its character at the time of installation. If the item is one which has a predominantly prefabricated character at the time of installation or assembly, it should be classified as machinery or equipment and the subcontract for its sale is therefore subject to renegotiation. A subcontract for an item is not considered subject to renegotiation if the item has no substantial existence as such until its construction from materials at the time of installation, i. e., where the principal component parts did not have a prior existence as machinery or equipment (in the ordinary sense) off the premises but result from construction on the premises.

(6) Attention is directed to the mandatory and discretionary exemption of contracts or subcontracts for the construction of buildings, structures, improvements or other similar facilities and the regulations relating thereto. (See paragraphs 346 and 355.3.)

336. Brokers, Manufacturers' Agents, and Dealers—Subcontracts.

(1) The definition of subcontract in subsection (a) (5) of the 1943 Act includes any contract or arrangement (a) which makes the compensation thereunder depend on procuring one or more contracts with a Department or subcontracts or on their amount, or (b) under which any part of the services performed or to be performed consists of the soliciting or attempting to procure or procuring one or more such contracts or subcontracts. This provision subjects such agreements to renegotiation under the 1943 Act to the same extent as other subcontracts. It does not, of course, validate any such agreement if otherwise illegal, or affect the allowance or disallowance of amounts paid under such contracts as items of cost.

(2) In addition, even when not within (1) above, contracts between manufacturers and their representatives are subject to renegotiation as subcontracts if the representative is performing, or agrees to make available on request, engineering, mechanical, or other services related to the performance of one or more prime contracts with the

Departments or subcontracts, including assistance in obtaining priority certificates and in other matters required in connection with performance of the contract. For example, manufacturers' agents in the machine tool industry customarily hold themselves ready to furnish engineering advice, mechanical service, and advice on training in the use of tools. By contract or custom the manufacturer usually pays the commissions of the agent whether or not these services are used, and charges the amount into the cost of the tool. These activities comprise "part of the work ..... required for the performance of any other contract or subcontract" within the definition of subcontract in subsection (a) (5) (A) of the 1943 Act. (See paragraph 203.4.)

(3) When a manufacturer's representative also acts as dealer, he is in substantially the same position as a jobber and his sales of articles to one of the Departments or to a contractor with a Department or a subcontractor are subject to renegotiation, whether the articles are delivered from his own inventory or shipped direct by the manufacturer. The fact that the prices on articles handled by manufacturers' representatives and jobbers are regulated under Office of Price Administration ceilings does not affect the result. (See paragraph 334.2.)

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within 90 days after the date of the enactment of the Revenue Act of 1943, files claim therefor with the secretary concerned.

"The following example will show how the amendment operates. A has, through the purchase of long cotton, 600,000 pounds of cotton on hand on a particular date, which has a book cost of ten cents a pound. On this date, A has future orders which will consume only 100,000 pounds of such cotton. A thus has a long position of 500,000 pounds of cotton. The next contract that A takes is for Government goods and requires the use of 500,000 pounds of such cotton. On the day A takes the Government contract, the current market price of such cotton is 15 cents a pound. In such a situation A has placed himself in a position to realize an inventory profit of $25,000. This inventory profit, if realized, is not a manufacturing profit, but is in the nature of an investment or speculative profit which could be realized. It has no relationship to the profits to be derived from the Government contract, and, therefore, represents a profit from an excess inventory, which is excluded from renegotiation under the amendment.

"The same situation might also apply in the case of a tobacco and cigarette manufacturer. Suppose for example, when the tobacco markets opened in the fall of 1942 A had on hand 20,000,000 pounds of tobacco of the 1940 crop, 20,000,000 pounds for the 1941 crops, and A then went into the market and bought some 20,000,000 pounds of 1942 grown tobacco, although his existing orders would not cause him to expect to manufacture more than 20,000,000 pounds into cigarettes. He thus has an excess inventory of 40,000,000 pounds of tobacco, and his case would fall within the amendment."

(b) *Definitions.* For the purposes of this paragraph the following definitions shall apply—

(i) *Materials.* Materials are products described in paragraphs 344.1 and 344.2 (of the grade, class and type to be used by the contractor or subcontractor in fulfilling contracts with a Department or subcontracts for processed or finished goods under which the amounts received or accrued are subject to renegotiation) acquired by the contractor or subcontractor in the last form or state in which contracts therefor are exempt under the provisions set forth in those paragraphs.

(ii) *Inventory.* Inventory is the quantity of materials on hand or under contract for purchase (including the quantity of such materials, adjusted for waste, contained in the work in process inventory and the inventory of uninvoiced finished goods) reduced by the quantity of materials under contract for sale. It should be noted that profits or losses from the sale of materials are excluded from renegotiation under the raw material and agricultural commodity exemptions and that such transactions must be considered separately in the application of these Regulations. A contract for purchase or a contract for sale is a contract under the terms of which (a) the quantity, the delivery of which the buyer is committed to accept, is certain, (b) the time

limits in which such fixed quantity is to be delivered are certain, and (c) the price is certain or is to be made certain solely by factors existing at a time specified in the contract. Special or unusual contractual arrangements with respect to the acquisition or disposition of materials or finished or processed goods will be given special consideration in accordance with the facts in the individual case.

(iii) *Existing Contracts or Orders.* Existing contracts or orders, at any time, are the uninvoiced portions of those contracts or orders for processed or finished goods, the fulfillment of which requires the use of the materials in inventory.

(iv) *Excess Inventory.* Excess inventory is the inventory of materials which is in excess of the quantity reasonably necessary to fulfill existing contracts or orders.

(v) *Replacement Value.* Replacement value of excess inventory is the value of such excess inventory calculated by determining as of the date on which the contractor or subcontractor enters into a contract with a Department or subcontract, under which the amounts received or accrued are subject to renegotiation, the market value of the materials of the grade, of the quality, and in the quantities to be used by the contractor or subcontractor in fulfilling the contract or subcontract. Any factors tending to establish a fair market value may be taken into consideration. If purchase prices or quotations for the particular grade, class and type are used, it will be required that the source of the information be satisfactory, and that the date of the quotation or sale be within a reasonable time of the date of the contract. Inasmuch as the calculation of excess inventory is made on a monthly basis, a weighted average of the market prices existing during each month may be used.

(vi) *Increment in Value.* Increment in value is the amount by which the replacement value of the portion of the excess inventory (such excess being applied first to the inventory of material before any processing, to the extent that it can be absorbed thereby), allocated to the fulfillment of renegotiable contracts or subcontracts, exceeds the cost of such portion of the excess inventory as determined by the method of accounting which was or is being used in actual renegotiation.

(c) *Time for Determining Excess Inventory.* Accounting for the purposes of determining excess inventory will commence as of the beginning of the month, four weeks period, or other similar period of accounting employed by the contractor or subcontractor, in which the contractor or subcontractor entered into the first contract with a Department or subcontract under which any part of the amounts received or accrued were subject to renegotiation. Subsequently, excess inventory will be determined as of the beginning of each month, four weeks period, or other similar accounting period in which the contractor or subcontractor enters into contracts with a Department or subcontracts under which the amounts received or accrued are subject to renegotiation. If no excess inventory is found to exist at the beginning of the month, it shall be deemed that none existed throughout the month. If excess inventory is found to exist at the beginning of the month, transactions within that month shall not be deemed to increase

the amount of such excess inventory as computed at the beginning of the month, until new computations at the beginning of the succeeding month shall be made. It will not be necessary to calculate actual physical inventories and orders on hand at the beginning of each month; a cumulative calculation may be made by applying the purchases made and orders taken in each month to the position at the beginning thereof, until the date of the succeeding physical inventory.

(d) *Treatment of Excess Inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter, and shall be allocated pro-rata between contracts with the Departments and subcontracts taken during the month under which the amounts received or accrued are subject to renegotiation, and other contracts, to the extent that such contracts and subcontracts require the use of the material, up to the end of the month in which the excess inventory is exhausted.

(e) *Exclusion of Profits Attributable to Increment in Value of Excess Inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits.

345. Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions.

345.1 Statutory Exemption. Subsection (i) (1) (D) of the 1943 Act provides that it shall not apply to—

> "(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code."

345.2 Internal Revenue Code. Section 101 (6) of the Internal Revenue Code exempts from taxation:

> "(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the

net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

346. Construction Contracts Awarded as a Result of Competitive Bidding.

346.1 **Statutory Exemption.** Subsection (i) (1) (E) of the 1943 Act provides that it shall not apply to—

"(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility".

346.2 **Interpretation and Application of Exemption.**

(1) The exclusion from renegotiation of construction contracts with a Department awarded as a result of competitive bidding applies only to contracts for the construction of buildings, structures, improvements and other similar facilities let to the lowest qualified bidder and which were entered into after advertisement and for which bids have been received from two or more independent, responsible and qualified contractors in actual competition with each other. (See paragraph 355.3.)

(a) As used herein "advertisement" shall be interpreted as meaning published advertising or such other solicitation for bids as has opened the bidding to all probable bidders under the circumstances of the particular case. "All probable bidders" shall be deemed to include all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned.

(b) The determination with respect to any contract of the type included under subparagraph (1) as to whether or not such contract is exempt under the provisions of this subparagraph (1) shall be made by the Department or Service conducting the renegotiation of such contract.

(c) In any case involving the renegotiable status of a subcontract under a prime contract the exempt status of which is the subject of question by reason of the possible application of this subparagraph (1), where no determination has been made as to whether such prime contract is so exempt, the procedure shall be as follows: The Department or Service conducting the renegotiation of such subcontract shall advise the Assignments and Statistics Branch of the identity of the prime contract, the exempt status of which is subject to question. The Assignments and Statistics Branch shall thereupon inform the Department or Service to which the prime contractor has been assigned for renegotiation and such Department or Service shall thereupon determine whether such prime contract is exempt under the provisions of this subparagraph (1) and shall notify the Assignments and Statistics Branch of such determination and the said Branch shall thereupon notify the Department or Service conducting the renegotiation of the subcontract. In the event that such prime contractor has not been, and will not be, assigned for renegotiation, or if previously assigned and such assignment has been cancelled, the Assignments and Statistics

Branch shall so notify the Department or Service conducting the renegotiation of the subcontract and such Department or Service shall determine whether the prime contract would be entitled to exemption under the provisions of this subparagraph (1) and shall notify the Assignments and Statistics Branch of such determination.

(2) This section of the Act is applicable only to amounts received or accrued under such contracts for fiscal years ending after June 30, 1943, and applies regardless of the date when the contracts were made.

(3) Contracts for the furnishing of materials or supplies or for the lease, sale or manufacture of machinery or equipment are not within the scope of this exemption. In determining whether a particular contract constitutes a contract for the construction of a building, structure, improvement or other similar facility or constitutes a contract for the lease, sale or manufacture of machinery or equipment, the essential character of the performance under the contract will control. In those cases where the items to be furnished under the contract have a predominently prefabricated character at the time of installation or assembly, the contract will ordinarily be regarded as one of sale or manufacture rather than of "construction". This question arises most frequently in connection with contracts for the sale and installation of machinery or equipment where both the furnishing of the machinery or equipment and its installation are embraced within a single contract. In cases of this character an undertaking to furnish the article may be severed from an agreement to install and an appropriate finding made as to that portion of the contract undertaking which might properly be exempted. On the other hand, where an item to be furnished under a contract has no substantial existence as such until its construction from materials at the site and time of installation so that the contract in its essence is one of construction as distinguished from manufacture or sale, the exemption will be applicable. The essential distinction does not depend upon whether the item involved does or does not become part of the real estate, but depends rather on whether the contract is essentially one for "construction" as distinguished from a contract for manufacture or sale. (See paragraph 335.2.)

347. Subcontracts Under Exempt Contracts and Subcontracts.

347.1 Statutory Exemption. Subsection (i) (1) (F) of the 1943 Act provides that it shall not apply to

> "(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph."

347.2 Interpretation and Application of Exemption. It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i) (4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c) (6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision. (See paragraph 348.5).

348. Annual Receipts Under Statutory Minimum.

348.1 **Statutory Provision.** Subsection (c) (6) of the 1943 Act provides

> "(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 **Computation of Aggregate Receipts and Accruals.**

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (1) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his sub-

contracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 No Reduction by Refund Below Exemption.

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a) (5) (B) of the 1943 Act), no determination of excessive profits shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2 (1) (b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a) (5) (B) of the 1943 Act, no determination of excessive profits shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2 (1) (a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the aggregate of the recoveries from such contractors must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. Subject to observance of the rule in this subdivision (4), on separate renegotiation of a contractor who is a member of a group under common control, the refund may reduce the aggregate amount of gross receipts or accruals of any such member below the floor specified in subdivision (1) or (2) of this paragraph.

(5) Except in those cases where prior to the commencement or renegotiation a contractor makes a retroactive price reduction or refund, applicable to the period which is the subject of renegotiation, in an amount at least equivalent to the maximum recovery permitted under the preceding provisions of this paragraph (so that if renegotiation proceedings were conducted there could be no recovery by reason of such limitation) the amount of excessive profits will be estimated by the renegotiating agency in the first instance without regard to the possible final effect of the above limitation on the amount of recovery.

348.4 Tests of "Control". In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual Control*: An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership Control*: A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture Control*: A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other Cases*: Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation.

348.5 **Subcontracts Under Contracts Exempt Under the Statutory Minimum.** Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 Act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 Act. (See paragraph 347.2.)

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Section 5

PERMISSIVE EXEMPTIONS FROM RENEGOTIATION

350. Scope of Section. The preceding Section deals with mandatory exemptions and exclusions from the operation of the Renegotiation Act of 1943. The Act contains certain provisions authorizing the War Contracts Board, or persons to whom its authority shall be delegated, to exempt other contracts and subcontracts from the operation of the Act. This Section will deal with these permissive exemptions. Such exempted contracts are excluded from consideration in determining whether excessive profits have been realized and the amount thereof, but are not excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6). (See paragraph 324.)

351. Contracts and Subcontracts to be Performed Outside of the United States.

351.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(A) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska."

351.2 Exemption.

(1) Each contract or subcontract to be performed outside the territorial limits of the continental United States, outside the territories of Alaska and Hawaii, outside the Panama Canal Zone, and outside the other territories and island possessions of the United States shall be exempt from the provisions of the Renegotiation Act of 1943 unless it shall be determined by the War Contracts Board or by any authority to whom power to exempt individual contracts under subsection (1) (4) (A) of the 1943 Act has been or may be delegated or redelegated;

(a) that administrative difficulties do not make impracticable the renegotiation of such contract or subcontract,

(b) that the procurement program of the United States in foreign countries will not be adversely affected by such renegotiation, and

(c) that such renegotiation will not otherwise be contrary to the interests of the United States.

(2) In determining whether the procurement program of the United States in foreign countries or the interests of the United States generally will be adversely affected by such renegotiation, it is considered desirable that representatives of the Department of State of the United States be consulted, if practicable; such consultation shall not, however, be essential to the valid renegotiation of any contractor or subcontractor.

(3) Such determination may be made at any time whether before or after the execution of the contract or subcontract and whether or not it contains a renegotiation clause.

352. Contracts and Subcontracts Where Profits Determinable When Price Established.

352.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(B) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;"

352.2 **Exemptions.** In the opinion of the War Contracts Board, the profits from

> (a) contracts and subcontracts for the purchase or lease of any interest in real estate (see paragraph 335.1), or
>
> (b) contracts for the purchase of capital assets, where the sale of such assets is not a part of or connected with the ordinary course of business of the vendor,

can be determined with reasonable certainty when the contract price is established, and such contracts and subcontracts are accordingly exempted from the provisions of the Renegotiation Act of 1943. For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation and communications and subcontracts thereunder, see paragraph 842.

353. When Contract Provisions Adequate to Prevent Excessive Profits.

353.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(C) any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits."

353.2 **Requests for Exemption.** Requests for exemption of particular contracts and subcontracts should be directed to the procurement officials of the Department concerned, and not to the War Contracts Board.

354. Contracts and Subcontracts for Standard Commercial Articles.

354.1 **Statutory Authority.**

(1) Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

"(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

"(7) The term 'standard commercial article' means an article—

"(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

"(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

"(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled 'An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes', or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every material respect with such article with which it is so compared."

(3) Subsection (i)(2) of the 1943 Act provides

"(2) The Board is authorized by regulation . . . to interpret and apply the definition contained in subsection (a) (7)."

354.2 Interpretation and Application.

(1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it

is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved.

(3) For exemptions under the standard commercial article exemption, see paragraph 845.

355. Contracts and Subcontracts When Effective Competition Is Likely to Exist.

355.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 General Interpretation of Exemption. The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 Application of Exemption to Construction Contracts. The Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist:

(1) The contract or subcontract is one for the construction of buildings, structures, improvements or other similar facilities. Contracts or subcontracts for the furnishing of materials or supplies or for the lease or sale of machinery or equipment are not within the scope of this exemption. Also see paragraph 346.2 for interpretation of mandatory exemption relating to such construction and see paragraph 335.2.

(2) The contract was entered into subsequent to June 30, 1943, and did not constitute a substitute for or a revision or extension of an existing contract entered into on or before June 30, 1943.

(3) The work covered by the contract was substantially the same as the work for which the bids were requested.

(4) Bids were received from two or more responsible and qualified contractors, who were independent of each other and were in actual competition with each other for the work for which bids were requested.

(5) The contract price was not in excess of the low bid received.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 Exemption. For an exemption relating to subcontracts under certain contracts and subcontracts involving electric power, gas, transportation and communications, see paragraph 842.

357. Delegation of Authority to Make Permissive Exemptions. The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. Requests for Exemption. All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in quintuplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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Section 6

LIMITATIONS ON COMMENCEMENT AND COMPLETION OF RENEGOTIATION

360. **Scope of Section.** The Renegotiation Act of 1943 contains certain limitations on the commencement of renegotiation proceedings and their completion, which will be outlined in this Section. The related subject of termination of all renegotiation under the Act is covered by the succeeding Section 7.

361. **Statutory Provision.** Subsection (c) (3) of the Renegotiation Act of 1943 provides:

> "(3) No proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statement required under paragraph (5) is filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statement is so filed, whichever is the later, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4), such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement."

362. **Commencement of Renegotiation Proceedings.** Unless renegotiation proceedings are commenced either, (1) within one year after the close of the fiscal year in which the excessive profits were received or accrued, or (2) within one year after the statement required under subsection (c) (5) of the 1943 Act is filed with the War Contracts Board, whichever is later, the liability of the contractor or subcontractor for the fiscal year involved will be discharged. Under subsection (c) (1) of the Renegotiation Act of 1943 the mailing of notice by registered mail of the time and place of a conference to be held with respect to the determination of excessive profits constitutes the commencement of the renegotiation proceeding.

363. **Completion of Renegotiation Proceedings.** Renegotiation must be completed by the making of an agreement or the entry of an order within one year following the commencement of the renegotiation proceeding, or the liability of the contractor or subcontractor for the fiscal year involved will be discharged. The one year period of

limitation on completion of renegotiation proceedings does not apply, however, to the review by the War Contracts Board of an order made by a Secretary of a Department or any officer or agency to whom his authority in this respect has been redelegated. Also, the one year period may be extended by mutual agreement. A form which may be used for such extension is set out in paragraph 725. The formalities for its execution are similar to the formalities for the execution of a renegotiation agreement (see RR 502.12 including subdivision (5)).

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Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code were decreased by reason of omitting from gross income (or by reason of the application of the provisions of section 3806 (a) of the Internal Revenue Code with respect to) that portion of the excessive profits for the renegotiated year which is equal to the amount of the gross renegotiation rebate. The amount by which the gross renegotiation rebate for the renegotiated year exceeds the amount of the contractor's or subcontractor's Federal tax benefit from the renegotiation for such year shall be the amount of the net renegotiation rebate for such year."

381.4 Profit, Cost Allocation and Allowance—General.

(1) *Profit.* The term "profits derived from contracts with the Departments and subcontracts" is defined by the Act as the excess of the amount received or accrued under contracts and subcontracts over the costs paid or incurred with respect thereto. The term "costs" includes selling, general and administrative expenses. In connection with renegotiation on an over-all fiscal-year basis income received or accrued and items of cost paid or incurred will be considered as having been received or accrued or paid or incurred in the fiscal year to which such items are to be attributed in accordance with the method of accounting employed by the contractor or subcontractor in keeping his books or in accordance with such other method of accounting as the contractor and the Department conducting the renegotiation may agree upon pursuant to the provisions of paragraphs 301 and 303. The method of accounting employed in determining the net income of the contractor or subcontractor for Federal income tax purposes shall be deemed to be the method of accounting employed by him in keeping his books. When the contractor requests that renegotiation be conducted on a completed contract basis, receipts and accruals and costs paid or incurred will be determined in accordance with the method agreed upon in connection with the granting of such request.

(2) *Allocation of Cost.* In general the costs paid or incurred with respect to renegotiable contracts will be those costs allocated thereto by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If, in the opinion of the War Contracts Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the reports or statements filed for the purpose of renegotiation, costs shall be determined in accordance with such method as in the opinion of the Board properly reflects such costs. No item of cost shall be charged to any contract or subcontract or used in any manner in determining costs to the extent that such item is not properly chargeable to such contracts or subcontracts.

(3) *Tax Deductions.* Costs allocable to renegotiable business shall be determined in accordance with the principles set forth above. Where the full amount of an item of cost is allocable to renegotiable business, it shall be allowed in the amount estimated by the War Contracts Board, or any agency to which its functions are delegated, to be allowable as a deduction or exclusion under Chapters 1 and 2E of the

Internal Revenue Code. No such item of cost shall be allowed in an amount less than or in excess of that which is estimated to be deductible or excludible from income under the Internal Revenue Code, and all items of cost shall be attributed to the fiscal year in which they are allowable in the determination of taxable income under said Code. Where only a portion of an item of cost is allocable to renegotiable business, the War Contracts Board, or any agency to which its functions have been delegated, shall estimate the total amount allowable to the contractor, as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code and the portion of this estimated amount which is allocable to renegotiable business in accordance with the principles set forth above shall be allowed as a cost of renegotiable business. Where it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are either high or low on a comparative basis, this circumstance shall be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of the profit adjustment to be required of the contractor.

(4) *Conditional Allowance of Cost.* The estimate of the renegotiating agency as to whether an item is allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code will, with the exception discussed hereafter in this subparagraph, be final for the purposes of renegotiation regardless of the difficulty of making such an estimate. However, in a few special cases it may be impossible for the agency to make any reasonable estimate as to whether or to what extent a particular item is allowable as a deduction or exclusion under the Internal Revenue Code for the fiscal year under renegotiation. In such special cases where the item is substantial in relation to the profits to be eliminated, the renegotiating agency may, subject to the restrictions set forth below, allow the item as a cost in renegotiation on the condition that in the renegotiation agreement the contractor will agree to refund as additional excessive profits, the amount so allowed as a cost of renegotiable business which is finally determined to be not allowable as a deduction or exclusion under the Internal Revenue Code for the fiscal year in which it was so allowed in renegotiation. If such conditional allowance is desirable, the renegotiating agency will observe the following procedure:

(a) the renegotiating agency, prior to making the conditional allowance, shall transmit to the Chairman of the Price Adjustment Board of the Department concerned, a statement setting forth the approximate amount of excessive profits to be finally eliminated and the amount of the item to be conditionally allowed in determining such excessive profits, a full description of the facts and the reasons why the agency is unable to determine whether the item should be allowed or disallowed as a cost, and a copy of the special clause proposed to be included in the renegotiation agreement.

(b) the renegotiating agency shall, at the same time, advise the Chairman of the Price Adjustment Board of the Department concerned whether the financial condition of the contractor appears to be such as to justify postponement of final determination of the allowability of the item as a cost.

(c) the Chairman of the Price Adjustment Board of the Department concerned, in his discretion, may authorize the conditional allowance and the use of a special clause, or may advise the renegotiating agency that the item should be unconditionally allowed or disallowed as a cost in renegotiation, or may instruct the renegotiating agency to treat the item in such other manner as the Chairman, in his discretion, may consider appropriate. Additional provisions may be prescribed for insertion in the renegotiation agreement to assure payment by the contractor of any amounts which may become due in the future by reason of the special clause, if, in the opinion of the Chairman, the financial condition of the contractor is such that the interests of the Government require the same.

382. Salaries, Wages and Other Compensation.

382.1 Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in paragraph 381.4.

382.2 Allowances.

(1) Under Section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable". In determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for *reasonable* salaries for such partners as are *active* in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 Wage and Salary Stabilization.

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

renegotiable business. Such a loss may be recognized in renegotiation only to the extent it is properly chargeable against renegotiable business.

385.3 **Losses from Prior or Subsequent Years.** Subsection (a) (4) (C) of the 1943 Act prohibits the allowance of any amount as an item of cost by reason of the application of a carry-over or carry-back. Therefore, notwithstanding that Section 122 of the Internal Revenue Code authorizes a taxpayer, under certain prescribed rules, to take a deduction for a taxable-year by a "carry-over" or "carry-back" of net operating losses for certain preceding or subsequent taxable years, no such deduction shall be allowable in renegotiation as an item of cost or as a deduction or exclusion from excessive profits.

386. **Interest.**

386.1 **Allocation.**

(1) All interest on borrowed funds should be allocated between renegotiable and non-renegotiable business according to the principles established in paragraph 381.4.

(2) Where a contractor has incurred obligations obviously disproportionate to the current volume of business, careful study should be made to ascertain the total amount of interest to be distributed in accordance with the above procedure.

386.2 **Allowance.** Interest on borrowed capital is deductible under the Internal Revenue Code and will, therefore, be allowed in renegotiation to the extent allocable to renegotiable business.

387. **Advertising Expenses.**

387.1 **Allocation.** Institutional advertising (designed to keep the advertiser's name or the identity of his peacetime products before the public) should ordinarily be allocated between renegotiable (including business done under cost-plus-fixed-fee or other similar contractual arrangements) and non-renegotiable business on a pro rata basis in the amount allowed in accordance with the provision of paragraph 387.2 hereof. Product advertising (specifically offering individual products for current sale) is ordinarily allocable to non-renegotiable business. However, where a contractor's normal volume of peacetime products has been wholly or partly replaced by war products, an amount of product advertising not inconsistent with the past practice of the business may be considered as essentially institutional advertising and allocated on the same basis.

387.2 **Allowance.**

(1) In estimating the amount allowable under the Internal Revenue Code as a deduction for advertising expenses, consideration will be given to the following statement issued by the Commissioner of Internal Revenue on September 29, 1942:

> "To be deductible, advertising expenditures must be ordinary and necessary and bear a reasonable relation to the business activities in which the enterprise is engaged. The Bureau recognizes that advertising is a necessary and legitimate busi-

ness expense so long as it is not carried to an unreasonable extent or does not become an attempt to avoid proper tax payments.

"The Bureau realizes that it may be necessary for taxpayers now engaged in war production to maintain through advertising, their trade names and the knowledge of the quality of their products and good will built up over past years, so that when they return to peacetime production their names and the quality of their products will be known to the public.

"In determining whether such expenditures are allowable, cognizance will be taken of (1) the size of the business, (2) the amount of prior advertising budgets, (3) the public patronage reasonably to be expected in the future, (4) the increased cost of the elements entering into the total of advertising expenditures, (5) the introduction of new products and added lines, and (6) buying habits necessitated by war restrictions. by priorities, and by the unavailability of many of the raw materials formerly fabricated into the advertised products.

"Reasonable expenses incurred by companies in advertising and advertising technique to speed the war effort among their own employees, and to cut down accidents and unnecessary absences and inefficiency, will be allowed as deductions. Also reasonable expenditures for advertisements, including the promotion of Government objectives in wartime, such as conservation, salvage, or the sale of War Bonds, which are signed by the advertiser, will be deductible provided they are reasonable and are not made in an attempt to avoid proper taxation."

(2) Expenditures for advertising which does not identify the particular company or product but which is solely for the purpose of aiding the war effort may, subject to certain limitations, be deductible as contributions for public purposes under Section 23 (o) or 23 (q) of the Internal Revenue Code (see special ruling by the Commissioner of Internal Revenue on this question, dated November 10, 1942).

(3) In considering advertising expenditures in connection with the determination of the "reasonableness of costs" of the contractor's business, the relationship between advertising costs and sales in present and past periods should be considered and a determination made as to whether or not the total advertising costs are reasonable and proper under the circumstances.

388. Other Costs, Expenses and Reserves.

388.1 Patent Royalties.

(1) When in renegotiation, a contractor has included substantial amounts in costs for royalties, paid or payable under patent licenses, the Departments will determine whether any action has been taken, or is pending or contemplated under the Royalty Adjustment Act (see paragraph 141), and will be guided by the principles set out below.

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties payable to the licensor after the effective date of the notice under the statute, whether or not accruing before or after the date, and does not and cannot require the refund of any royalties which have been paid prior thereto.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are subject to an order under the Royalty Adjustment Act, the Departments will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the rates or amounts fixed in the order.

(4) In renegotiation with a licensee for a period prior to that in which royalty accruals are subject to an order under the Royalty Adjustment Act, no weight will normally be given to the determination made in a later order as to what rates and amounts of royalties are fair and just. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23(a) of the Internal Revenue Code. Particular attention should be given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code, even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention

or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee.

388.2 **Corporate Charitable Contributions.** Contributions of the character described in Section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under Section 23 (q).

388.3 **Cost Allowance in Connection with Raw Materials.** Reference is made to paragraphs 344.3 and 344.4 for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials.

389. **State Income Taxes.**

389.1 **In General.** Under subsection (a) (4) (B) of the 1943 Act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that in determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income (other than Federal taxes) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. The term "taxes measured by income" is interpreted to mean taxes which vary in accordance with the amount of net income of the taxpayer. Such term does not include taxes imposed upon or measured by gross income, gross receipts or sales. Such taxes measured by net income are herein referred to generally as "state income taxes" although actually they may not be designated as "income taxes" in the legislation imposing such taxes, and although they may be imposed by political sub-divisions other than a state.

389.2 **Adjustment for State Tax Imposed at a "Flat Rate".**

(1) The amount of unadjusted excessive profits, without consideration of any state income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The state income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under Section 3806 of the Internal Revenue Code. (See paragraph 440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative

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(6) The facts and conclusions with respect to the contractor's business are to be fully developed before a determination of excessive profits.

(7) Determinations, either proposed or final, are to be carefully considered and are to weigh all the facts and factors of the contractor's business as presented and established.

403. **Specific Considerations.**

403.1 **Profits Before Taxes.** In renegotiation the amount of excessive profits is to be determined before provision for Federal taxes on income. Profit margins on war contracts should not be increased or maintained at a high level in order to offset higher taxes. To permit such a practice would nullify the intent of Congress as expressed in the Revenue Act.

403.2 **Separation of Fixed-Price and Other Special Fee Contracts.** Cost-plus-fixed-fee and other special fee contracts of a contractor are to be treated separately from fixed-price contracts. It is necessary to set forth separately the amount of renegotiable business done on cost-plus-fixed-fee or other special fee contracts. (See paragraph 407.)

403.3 **Comparisons.** In evaluating a contractor's performance, comparisons should be made with the prices, costs and profits of other contractors engaged in the production of the same or similar products or using the same or similar processes.

403.4 **Factors Considered.** The factors required to be given consideration are stated in paragraphs 408 through 416 of this Chapter.

403.5 **Significance of Settlements, or Profits or Losses of Other Years.**

(1) Notwithstanding the existence of a renegotiation settlement for a previous fiscal year, all the facts applicable to a contractor's business for the year being renegotiated are to be examined and considered. The previous basis of determination is not a controlling precedent and the renegotiation of a succeeding fiscal year shall be predicated solely on the facts and circumstances of that period.

(2) Loss of 1942 exempt volume of sales should not be compensated for by an increase in the profit margin on renegotiable sales.

(3) In the case of renegotiation conducted on a fiscal year basis, the contractor's profits or losses on renegotiable sales in a year prior or subsequent to the year subject to renegotiation shall not be used as an off-set or adjustment in the determination of excessive profits for the year which is the subject of renegotiation. (See paragraph 385.3.)

403.6 **Reserves Against Possible Renegotiation Refunds.** It is recognized that sound accounting principles may make it desirable for contractors to establish reserves against possible renegotiation refunds, but that the amount of reserves established in individual situations will vary widely depending upon the policy of the particular contractor concerned. Neither the existence nor the amount of such

reserves is to be considered directly or indirectly in connection with the determination of excessive profits to be eliminated in renegotiation. The renegotiating agencies will recognize that conservative practice may result in setting up such reserves in excess of the anticipated liability and will not directly or indirectly penalize a contractor for such action.

404. **Computing Margins of Profit.** In computing the margin of profit a contractor receives on his renegotiable business or sales after making a refund, the amount of the refund is always deducted from the renegotiable business or sales as well as from the profit thereon.

405. **Overextended Contractors.** It is not the function of renegotiation to provide contractors with capital funds from excessive profits created by the prices of war goods. The contractor's right to a reasonable profit and his need for working capital should be distinguished. A contractor should not be allowed to retain excessive profits on war contracts because he lacks adequate working capital in relation to a greatly increased volume of business. Other measures may be availed of to provide adequate financing. In certain cases the payment of the refund may be deferred but only for a reasonable period and under circumstances which justify such deferment. This policy is explained in paragraph 422.

406. **Minimum Refund.** No refund of excessive profits should, in the absence of unusual circumstances, be required in an amount less than $10,000 before credit for the adjustment for state income taxes (see paragraph 389). The provisions of this paragraph shall not apply, however, to subcontracts under subsection (a) (5) (B) of the 1943 Act or to cases where the provisions of paragraph 348.3 operate to limit the amount of the refund.

407. **Cost-Plus-Fixed-Fee Contracts.**

407.1 **Policy.** Cost-plus-fixed-fee contracts are to be considered separately from fixed-price contracts. Paragraphs 407.2, 407.3 and 407.4 refer to supply contracts.

407.2 **Procedure.** In renegotiating cost-plus-fixed-fee contracts, the contractor should set forth the actual and prospective costs as well as the fees, stated separately, for each individual contract. The following information should be obtained:

(1) Comparison of the actual and prospective costs of each contract should be made with the estimated cost upon which the fee was based.

(2) The dates, amounts and fees of each contract should be assembled in chronological order. Note whether the fixed fee decreased as the volume of the same product to be produced on successive contracts increased.

(3) The proportion of the sales, costs and profits attributable to the fiscal year under renegotiation should be set forth.

(4) The factors referred to in paragraph 408 and following should be considered.

407.3 Treatment of Disallowed Costs and Adjustment of Fees.

(1) Disallowances of costs under cost-plus-fixed-fee contracts made in accordance with the terms of the contracts will, except as noted below, be deducted from the fee. If, however, any part of the amounts so disallowed are determinable business expenses which would otherwise necessarily have been incurred for the continued operation of the business as an enterprise and, if such amounts are deductions of the character permitted under the applicable provision of the Internal Revenue Code and the contractor has fixed-price business, the amount of such disallowances may be allocated to fixed-price renegotiable and non-renegotiable business in proper proportions.

(2) The resultant net fee in terms of percent of costs will be related to the percent fee provided for under the contract or contracts.

(3) Actual product costs will be related to the prices specified in the contract or contracts on which the fee is based.

(4) The resultant dollar fee will be related to the work done under the contract or contracts, the performance results, and the volume of business resulting from the contract or contracts.

(5) The elements stated in paragraphs 1, 2, 3 and 4 above should be reviewed, when appropriate, with the procurement officers responsible for the placing and supervision of the cost-plus-fixed-fee contracts for the purpose of determining whether or not the fee result is consistent with that intended when the contract or contracts were entered into.

407.4 Profit Margins.

(1) The margin of profit on cost-plus-fixed-fee contracts should be less than that on fixed-price contracts for the same volume of the same product under similar circumstances.

(2) If there has been a reduction of costs below the estimated costs on which the fee was based and it is clearly demonstrated that such reduction of costs is attributable to the contractor's own efforts, the fee should not be reduced merely because of this reduction in costs. The fees received under a cost-plus-fixed-fee contract should have a reasonable relationship to the services performed by the contractor.

408. **Factors Requiring Consideration.** The Renegotiation Act of 1943 specifies factors which must be taken into consideration in determining excessive profits and requires the consideration of additional factors when published in the regulations of the War Contracts Board.

409. **General Policy.** Reasonable profits in every case should be determined with reference to the particular factors present without limitation or restriction by any fixed formula with respect to rate of profit, or otherwise. Renegotiation should not result in a margin of profit based on the principle of a percentage of cost as profit. Contractors who sell at lower prices and produce at lower costs through good management, improved methods of production, close control of expenditures and careful purchasing should receive a relatively more

favorable determination than those who do not. Mere claims of the contractor, in the above terms, for favorable consideration cannot be recognized. They must be supported by established facts, analyses and appropriate comparisons which clearly demonstrate their validity.

410. Efficiency of Contractor.

410.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities, and manpower."

410.2 Comment. Consideration is to be given to the contractor's record for efficiency or lack of efficiency in operations with particular attention to the following:

(1) The quantity of production; for example, in relation to available physical facilities; the meeting of production schedules; the expansion of facilities; the maximum use of available production facilities.

(2) The quality of production; for example, the record of maintenance of standards of quality; the rejection record; reported mechanical or other difficulties in the use or installation of the product.

(3) The reduction of costs; for example, the decrease in costs per unit of production or per unit of sales as between fiscal years and as compared with other contractors producing the same or similar products where the operations are reasonably comparable; the decrease in administrative, selling or other general and controllable expenses; the decrease in prices paid vendors on purchased materials and subcontracted items or units. (See paragraph 411.2 (1)-(3).)

(4) The economy in the use of materials, facilities and manpower; for example, the decrease in quantity of materials used in relation to production and the number of employees in relation to production; the substitution of non-critical materials for critical materials; the reduction of waste.

411. Reasonableness of Costs and Profits.

411.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(ii) reasonableness of costs and profits, with particular regard to volume of production, normal pre-war earnings, and comparison of war and peacetime products."

411.2 Comment.

(1) Consideration is to be given to the reasonableness or the excessiveness of costs and profits of the contractor. Comparisons

should be made with the contractor's own costs and profits in previous years and with current costs and profits of other contractors, if the information is available. In comparisons, uncontrollable variations in labor, material or other costs should be taken into account. Particular attention should be given to relative changes in controllable costs such as selling, advertising and general administrative expenses. Low costs with relation to other contractors and lowered costs with relation to the prior fiscal year, where clearly established and shown to be the result of efficiency in management, are especially significant and should receive favorable consideration.

(2) Consideration should be given to the corresponding profits in pre-war base years of the contractor and for the industry, especially in cases where the war products are substantially like pre-war products. In the absence of exceptional circumstances, the years 1936-39 will be used as a base period. In making comparisons with the base period, consideration should be given to any fundamental changes in the contractor's business, including the difference in character between war and peacetime products. The contractor's peacetime profits will be of greater significance where there is little change in the product or manufacturing process since the base years. The rate of profit made on peacetime business is not of itself a basis for profits to be made on war contracts. It should not be assumed that under war conditions a contractor is entitled to as great a margin of profit as that obtained under competitive conditions in normal times.

(3) Consideration is to be given to the effect of volume on costs and profits. Increased volume usually serves to reduce average unit costs and increase profits accordingly. Where the volume has been created by Government purchasing, the Government should receive the principal benefit from the decreased costs and increased profits resulting therefrom. In general, the margin of profit on expanded war sales should be reduced in reasonable relationship to the expanded volume.

(4) Where a contractor is engaged in more than one class or type of business, the varying characteristics of the several classes of business should be taken into consideration.

412. Capital Employed.

412.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(iii) amount and source of public and private capital employed and net worth."

412.2 Comment. Consideration is to be given to the amount and source of capital employed. This should include establishing and considering the proportion of plant or equipment or materials supplied by Government agencies or other contractors; the amount of production from plant and equipment furnished by the Government or others; the amount and proportion of investment covered by certificates of necessity; the amount of private capital at the beginning of the year; the extent and source of additional investment during the year in fixed

assets; and loans, advances or Government guarantees. The relationship of the profit before taxes realized before and after renegotiation from the use of capital employed in renegotiable business to the value thereof at the beginning of the year should be used as a check to determine the return being realized on such investment. A contractor using his own capital is generally entitled to more favorable consideration than a contractor largely dependent upon Government financing or Government furnished facilities. Where a large part of the capital or facilities is supplied by the Government, the contractor's contribution tends to become one of the management only and the profit margin should be considered accordingly.

413. Extent of Risk Assumed.

413.1 • Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

"(iv) extent of risk assumed, including the risk incident to reasonable pricing policies."

413.2 Comment.

(1) Consideration is to be given to the extent of risk assumed by the contractor; for example, possible increase in the cost of materials and wages; delays from inability to obtain materials; "cutbacks" in quantities; guarantees of quality and performance of the product; and such other risks as may be clearly determined.

(2) Particular consideration should be given to the risks assumed incident to reasonable pricing policies. The pricing policy of the contractor is more clearly indicated by the reasonableness of his billing prices and the reasonableness of the profit margin included in billing prices than by his final profit position. Voluntary refunds establishing a lower profit margin for the fiscal year are significant only when having the effect of consistently adjusting prices and profits throughout the period. The contractor whose pricing policy results in comparatively reasonable original profit margins on renegotiable business from original billing prices should receive more favorable consideration than a contractor whose pricing policy results in substantially excessive profits. The contractor who maintains low cost and only a reasonable margin of profit is subjected to the risks normally incident to the performance of a fixed-price contract secured under competitive conditions, while the contractor who overprices usually has taken few, if any, of such risks. In the latter case, the profit margin of the contractor should be adjusted in the direction of the fee that might have been allowed under a cost-plus-a-fixed-fee contract for the production of similar articles. Since many contractors have now had sufficient experience in production of contracted materials to eliminate or reduce the risks that may have justified liberal prices earlier, renegotiation agencies are to emphasize pricing policy by giving less favorable consideration to contractors who have not followed a reasonably close pricing policy. (See subdivision (5) of this paragraph.)

(3) The record of the contractor, during the fiscal year being renegotiated, in reducing prices to reflect reductions in costs and to

avoid the accumulation of excessive profits should be taken into account. The record in fulfilling or not fulfilling, in the year under consideration, price reduction commitments in a renegotiation agreement made in the previous year should be given substantial weight.

(4) Price comparisons should be made with other contractors making the same or essentially similar products.

(5) While prices which are actually lower than those of competitors are a favorable fact, it should be recognized that a low profit margin may be the result of comparatively low prices being coupled with comparatively high costs in which event neither the low prices nor the low profit margin should receive full consideration as favorable facts.

(6) Where the entry of a contractor into war business involved physical and other adjustments which will create substantial problems in a reconversion to pre-war business such as possible loss on capital investments made for war production purposes, loss or saturation of markets or other similar problems, the increased risk incident to such contractor's entry into war business as compared with other contractors who do not have similar risks is to be given consideration.

414. Contribution to the War Effort.

414.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(v) nature and extent of contribution to the war effort, including inventive and developmental contribution and cooperation with the Government and other contractors in supplying technical assistance."

414.2 Comment. Consideration is to be given to the nature and extent of the contractor's contribution to the war effort. Favorable consideration for unusual contributions should begin at a high level of performance. Experimental and developmental work of high value to the war effort, and new inventions, techniques and processes of unusual merit are examples of special contributions. The extent to which a contractor cooperates with the Government and with other contractors in developing and supplying technical assistance to alternative or competitive sources of supply is a fact which should be given favorable consideration and the effect of such sharing of knowledge on the contractor's future peacetime business should also be taken into account.

415. Character of Business.

415.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(vi) character of business, including complexity of manufacturing technique, character and extent of subcontracting, and rate of turn-over."

415.2 Comment.

(1) Consideration is to be given to the character of the business of the contractor. The manufacturing contribution will vary with the nature of the product and the degree of skill and precision required in the work performed by the contractor. A contractor who performs a large proportion of the work under his contract directly contributes a greater part of the ultimate value of his product and generally has a lower turnover than companies acting primarily in an assembly capacity. The work done by a contractor who subcontracts a substantial portion of the manufacturing process differs from the work done by a contractor who makes the end product through all or most of its production stages. The ratio of labor and burden (overhead) to materials included in costs is usually significant. The relative complexity of the manufacturing technique and the relative integration of the manufacturing process are the basic considerations in evaluating this factor.

(2) Maximum war production and the policy of Congress require that subcontracting be used to the maximum extent practicable. A contractor who, through subcontracting, materially increased the volume of war production in addition to making full use of his own plant and facilities, has shown ingenuity and resourcefulness in making use of the facilities of small plants, has assisted with engineering and production advice and has devoted time and managerial ability to such subcontractors should be considered as having made a greater contribution than one who has merely subcontracted certain parts of his production requirements. The contribution made by a contractor with respect to organizing the volume of his business produced by subcontractors varies substantially and must be evaluated in each instance.

(3) Rate of turnover will indicate the use of plant, materials and net worth. Low rate of turnover may indicate more complete integration in production or be related to the type of product and nature of the manufacturing process. High rate of turnover may indicate relatively smaller manufacturing contribution or by comparison with other manufacturers of similar products a relatively greater efficiency.

416. Additional Factors.

416.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(vii) such other factors the consideration of which the public interest and fair and equitable dealing may require, which factors shall be published in the regulations of the Board from time to time as adopted."

416.2 Factors Provided by Regulations. No additional factors have been adopted by the War Contracts Board as, in its opinion, the statutory factors are broad enough to provide a basis for consideration of any element of a contractor's business necessary to be considered in renegotiation.

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Section 2

RECOVERY OF EXCESSIVE PROFITS ALREADY REALIZED

420. Scope of Section. This Section deals with the repayment of excessive profits already realized. Section 3 deals with the elimination of excessive profits through voluntary agreement to reduce prices on deliveries to be made in the future. Section 4 deals with the allowance of the tax credit to which the contractor is entitled under Section 3806 of the Internal Revenue Code.

421. Statutory Provision. Subsection (c) (2) of the 1943 Act provides:

> "Upon the making of an agreement, or the entry of an order, under paragraph (1) by the Board, or the entry of an order under subsection (e) by The Tax Court of the United States, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits (A) by reductions in the amounts otherwise payable to the contractor under contracts with the departments, or by other revision of their terms; or (B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits; or (C) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to a subcontractor, any amount of such excessive profits of such subcontractor; or (D) by recovery from the contractor, through repayment, credit, or suit any amount of such excessive profits actually paid to him; or (E) by any combination of these methods, as is deemed desirable. Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover from the contractor any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection. The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon. Each contractor and subcontractor is hereby indemnified by the United States against all claims by any subcontractor on account of amounts withheld from such subcontractor pursuant to this paragraph. All money recovered in respect of amounts paid to the contractor from appropriations from the Treasury by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury. In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits

taxes as provided in section 3806 of the Internal Revenue Code. For the purposes of this paragraph the term 'contractor' includes a subcontractor."

422. Recovery by Voluntary Repayment.

422.1 In General. In renegotiation with respect to a completed fiscal period, the elimination of excessive profits will ordinarily be effected pursuant to an agreement providing for a refund. This refund may be made by the contractor in a single payment or in installments as the agreement may provide (see paragraphs 323 and 502.5).

422.2 Time of Repayment—General Rule.

(1) Generally, when excessive profits are eliminated by installment payments, the final installment must be paid not later than the end of the fiscal year following that to which the renegotiation relates, or within 30 days after the execution and delivery of the agreement, whichever is later.

(2) If, in the opinion of the Department conducting the renegotiation, the application of the policy stated in paragraph 422.2 (1) will result in undue hardship to a contractor, then the renegotiation agreement may provide for further extensions of the time of payment for such period or periods, not extending beyond two years after the close of the fiscal year to which renegotiation relates, as may be approved by such Department.

(3) Installments must be arranged so that there is no contravention of the principle stated in paragraph 422.3 with respect to income tax payments.

422.3 Relation to Income Tax Payments. In any case where the excessive profits have been or may be excluded from income for Federal income and excess profits tax purposes for the year to which renegotiation relates, the installments in which the renegotiation refund is to be paid must be so arranged that the total cash payments required on or before each payment date for Federal income and excess profits taxes upon income for such year are at least equal to the Federal income and excess profits taxes the contractor would have had to pay by each such date upon the excessive profits eliminated.

422.4 Interest. No renegotiation agreement when originally made shall require the payment of interest on installments of the refund which are not in default thereunder and which are provided to be payable within the time prescribed in paragraph 422.2.

422.5 Repayment by Credit Memoranda. The elimination of excessive profits may, but only if the renegotiation agreement so provides, be effected by reductions in the amounts otherwise payable to the contractor under contracts with the Departments or by other revision of their terms. This may be accomplished in whole or in part by the issuance by the contractor of credit memoranda to a Department or Departments applicable against specified existing prime contracts in a sum not in excess of the amounts then unpaid thereon.

422.6 Tax Anticipation Notes Not Acceptable. Tax anticipation notes cannot be accepted in discharge of an obligation to eliminate excessive profits. However, the Treasury Department has informed all Federal Reserve Banks that they are authorized to redeem currently Series B or Series C tax notes if the proceeds of the notes are to be used in payment of sums due as a result of renegotiation.

422.7 Authority to Enforce Payment. The authority to enforce payment is dealt with in paragraphs 421, 626.1 and 821.1. (See also paragraphs 423 and 502.5(4).)

423. Withholding as a Method of Recovery.

(1) In a proper case, excessive profits may be eliminated by the withholding of the amount of excessive profits from amounts otherwise due to a contractor or by directing a contractor to withhold for the account of the United States amounts otherwise due to a subcontractor.

(2) Withholding on subcontracts will be effected by a contractor or subcontractor upon a direction issued by a Secretary of a Department or pursuant to his authority. The contractor should make payment to his subcontractor in accordance with the terms of the subcontract until otherwise so directed. The 1943 Act indemnifies any contractor or subcontractor against all claims under any subcontract for an amount withheld pursuant to such a direction. Any amount so withheld by a contractor or subcontractor shall be held by him for the account of the United States and shall be paid over to a Department upon a direction issued by or pursuant to the authority of a Secretary of a Department.

(3) Action to withhold under contracts and subcontracts may be taken upon default in the elimination of excessive profits determined by agreement, as well as in cases of determinations of excessive profits made by unilateral order.

(4) A form which may be used to direct a contractor to withhold and a form which may be used to direct a contractor to pay over amounts withheld are found in paragraphs 748.1 and 748.2.

424. Repayment of Excessive Profits Determined by Order. The elimination of excessive profits determined by order is dealt with in paragraph 626.

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Section 4

RENEGOTIATION AND TAXES

440. Scope of Section. This Section deals with the effect of renegotiation upon a contractor's Federal income and excess profits taxes. With reference to adjustment for state taxes see paragraph 389.

441. Statutory Provisions.

441.1 Subsection (c)(2) of the 1943 Act. Subsection (c)(2) of the 1943 Act provides in part as follows:

> "In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code."

441.2 Section 3806 of the Internal Revenue Code. Section 3806 of the Internal Revenue Code is set forth in paragraph 802. This Section requires, as a general rule, that the amount of a contractor's Federal income and excess profits taxes, which have been assessed for a prior taxable year in respect of excessive profits realized in such year, be allowed as a credit against the total excessive profits to be eliminated. By reason of the amendments to Section 3806 made by Section 701(c) of the Revenue Act of 1943, it also provides special rules covering the allowance of tax credits against excessive profits to be eliminated for taxable years beginning in 1942 in cases involving individuals who are subject to the Current Tax Payment Act of 1943.

442. Renegotiation After Filing of Federal Tax Returns.

442.1 Allowance of Credit for Federal Taxes.

(1) The allowance of a credit for Federal taxes is provided by Section 3806 of the Internal Revenue Code for the purpose of relieving contractors from double payments of excessive profits to the Treasury, once in the form of taxes and again as excessive profits, and to avoid the necessity for tax refunds by the Treasury.

(2) Where excessive profits are determined for a taxable year for which complete Federal income and excess profits tax returns, as distinguished from tentative returns, have been filed, the difference between the amount of Federal income and excess profits taxes assessed in respect of the contractor's income for the period (including the excessive profits) and the amount of Federal income and excess profits taxes which would have been assessed if the excessive profits had been excluded from the returns, is allowed as a credit against the excessive profits determined.

(3) The amount of the credit is based upon the amount of taxes assessed prior to the credit computation. If the assessment based upon the return filed has not been revised by the Bureau of Internal Revenue then the credit is computed upon the basis of such assessment. If such assessment has been revised, then the credit is computed upon the basis of the revised assessment.

(4) Adjustments of a contractor's returns to reflect the reduction of taxable gross and net income and the amounts of tax and postwar credit are made by the Bureau of Internal Revenue after tax credits have been allowed. Any subsequent changes in the contractor's net income or tax liabilities are based upon these adjusted figures. Amended returns are not to be filed. When the tax credit is computed and applied it will not be revised thereafter.

(5) The effect of this credit provision is to require precisely the same aggregate amount of payments to the Government (as taxes and excessive profits) where renegotiation occurs after the filing of Federal tax returns, as would have been required if the gross amount of the excessive profits had been repaid to the Government prior to the filing of the Federal tax returns and no Federal taxes had been assessed thereon.

442.2 Computation of Credit for Federal Taxes.

(1) The Bureau of Internal Revenue computes the credit allowable under Section 3806 of the Internal Revenue Code for Federal income and excess profits taxes assessed for a prior taxable year. The contractor should submit written requests for such determinations directly to the Internal Revenue Agent in Charge of the Division of the Bureau of Internal Revenue where the contractor filed its tax return for the fiscal year involved. Forms for requesting computation of the credit appear at paragraphs 731, 732 and 733. The requests should not be sent to the Collector of Internal Revenue.

(2) Where the original returns have been filed so recently that they are not available to the office of the Internal Revenue Agent in Charge, he will compute the amount of the tax credit from the contractor's retained copies of the returns. It usually requires at least six months after filing, for a return to reach the office of the Internal Revenue Agent in Charge. In such cases, photostat or certified copies of the returns should accompany the request to the Internal Revenue Agent in Charge. In the case of corporations, copies of pages one and two of the corporation forms 1120 and 1121 will ordinarily suffice.

(3) A copy of the contractor's request to the Internal Revenue Agent in Charge should be mailed to the Department handling the renegotiation.

442.3 Federal Tax Credit of Individuals Under Current Tax Payment Act.

(1) Under the Current Tax Payment Act of 1943, there is only one tax liability with respect to the income of individuals for 1942 and 1943, and this tax liability is determined on the basis of the return for 1943. Accordingly, the tax credit allowable to individuals in such cases will *not* be the decrease in the tax for the particular year which is renegotiated, but the decrease in the total tax for 1943 which results from the elimination of excessive profits realized in 1942 or in 1943.

(2) The amount of an individual's total tax for 1943 which is to be decreased by the elimination of excessive profits is either his

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AGREEMENTS AND STATEMENTS

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(2) If the renegotiation is concluded before the contractor has filed his Federal income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in paragraph 741.2(3)(a) of these Regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under Section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in paragraph 741.2(3)(b) of these Regulations.

502.5 Article 4: Terms of Payment.

(1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in paragraph 741.2(5) of these Regulations. The Department or Service which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company or any of such corporations, the payment provision, in accordance with the footnote to Article 4 on the standard form will require payment of the amount thereof to the RFC Price Adjustment Board.

(2) For the purpose of determining the portion of the profits which are to be eliminated which were derived from such prime contracts, the Department conducting renegotiation will segregate the amounts received or accrued under such contracts from amounts received or accrued under other renegotiable contracts and subcontracts involved in the renegotiation of a particular contractor. It will also generally segregate the profits derived from such prime contracts. Where, however, it is indicated that the margin of profit attributable to contracts with the RFC subsidiaries is substantially the same as that attributable to other contracts and subcontracts involved in the renegotiation, a fair allocation of the profits to be eliminated may be effected by prorating the amount of the refund on the basis of the amount of renegotiable business attributable to contracts with the RFC subsidiaries and the amount of such business attributable to other contracts and subcontracts. Accordingly, the Department conducting renegotiation may determine the amount of the renegotiation refund to be paid to the RFC Price Adjustment Board on such basis where it is believed that the application of the same will result in a fair and reasonably accurate result.

(3) Responsibility for the collection of, and for the maintenance of records concerning, any amounts due the RFC Price Adjustment

Board under renegotiation agreements, shall rest with the RFC Price Adjustment Board, and any such agreements providing for refunds to the RFC under the 1943 Act shall be referred to the RFC Price Adjustment Board for the collection of that portion of the refund payable to that Board. The Department conducting the renegotiation will retain responsibility for the collection of only that portion of the refund which is payable into the Treasury of the United States. In such cases, an authenticated copy of the renegotiation agreement shall be forwarded to the RFC Price Adjustment Board, through the Assignments and Statistics Branch, Renegotiation Division, ASF. The Assignments and Statistics Branch should be promptly notified of any default in the collection of any installment due under such agreements and the enforcement of the obligations under the agreement properly coordinated under the supervision of the War Contracts Price Adjustment Board.

(4) In the case of suit for the collection of any amounts due under any renegotiation agreements in which the RFC is entitled to a portion of the refund, under ordinary circumstances the Assignments and Statistics Branch should assign such case for collection to the Department then having the predominant interest in the balance of the refund.

(5) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(6) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see paragraph 505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(7) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in paragraph 422 of these Regulations.

502.6 **Article 5: Article Requiring Elimination of Additional Excessive Profits.** The provision set forth in paragraph 741.1 of these Regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the Renegotiation Act of 1943 are increased.

502.7 **Article 6: Covenant Against Contingent Fees.** This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts.

502.8 **Article 7: Officials Not to Benefit.** This article is also a standard provision in most Government contracts, required by Revised Statutes, Section 3741, as amended (41 U. S. C. Sec. 22).

502.9 **Article 8: Discharge of Liability.** In consideration of performance by the contractor of the terms of the agreement he is granted a discharge of liability in accordance with subsection (c)(4) of the Renegotiation Act. When the renegotiation covers only contracts and subcontracts completed during the fiscal year or has been conducted only with respect to certain contracts or subcontracts, care should be taken that Article 8, when read in connection with Article 1 (paragraph 502.2) discharges the liability of the contractor only with respect to the contracts and subcontracts actually renegotiated.

502.10 **Article 9: Renegotiation Rebate.** This article specifically reserves to the contractor his rights under subsection (a)(4)(D) of the Renegotiation Act in the event that a recomputation of his amortization deduction under Section 124(d) of the Internal Revenue Code should entitle him to a rebate.

502.11 **Article 10: Execution of the Agreement.** The persons executing the agreement on behalf of the contractor and on behalf of the Government state that they do so upon proper authority.

502.12 **Formalities of Execution.**

(1) If the contractor is a corporation, the agreement must be accompanied by a certified resolution of the Board of Directors of the contractor (or the equivalent committee or other body). The form of the resolution, the adoption of the resolution, and the execution of the certificate must all be in accordance with the formalities required by the particular state laws involved. The resolution itself should state:

(a) that the agreement is being entered into pursuant to the Renegotiation Act;

(b) the amount of profits to be eliminated—and the fiscal year for which they are to be eliminated;

(c) the title of the corporate officer who is being authorized to execute the agreement on behalf of the corporation; and

(d) the title of the corporate officer authorized to affix and attest the corporate seal thereon.

The certificate, certifying the adoption of the resolution should state:

(a) the name and capacity of the officer signing the certificate;

(b) the body adopting the resolution (normally this will be the Board of Directors, but may, in a particular case, be an Executive Committee or similar body);

(c) the date of the meeting;

(d) the fact that a quorum of the Board (or other body) was present throughout the meeting;

(e) that the resolution was duly adopted;

(f) if the particular agreement is specifically referred to in the resolution, that the agreement to which the certified resolution is attached is the same as that referred to in the resolution; and

(g) that the resolution has not been modified or rescinded and that it is in full force and effect.

If the resolution is adopted by an Executive Committee or similar body (other than the Board of Directors) the certificate must also include satisfactory evidence of the body's authority to act.

(2) If subsidiaries of the contractor are included with the contractor in a consolidated renegotiation, execution by the contractor alone will be sufficient unless the renegotiating agency requires otherwise. (See paragraph 311.)

(3) If the contractor is a partnership, all general partners therein should execute the agreement.

(4) If the contractor is a joint venture, each participant should execute the agreement.

(5) The Department conducting the renegotiation has authority to depart from the requirements of this paragraph in its discretion.

503. **Exhibit A.** There shall be attached to every renegotiation agreement providing for the elimination of excessive profits an exhibit designated "Exhibit A," which shall contain as a minimum, the financial data and information referred to in paragraph 741.3. In the discretion of the Department conducting the renegotiation, any additional financial data or information may be included in Exhibit A.

504. **Exhibit B.** When the contractor has subsidiaries, there shall be attached to the renegotiation agreement a list of such subsidiaries in detail. Such list shall be designated as "Exhibit B." Ordinarily, all of such subsidiaries will have been consolidated with the parent company for purposes of the renegotiation agreement, and if any has not been so consolidated, that fact should be specially noted on Exhibit B. The amount of excessive profits, if any, allocated to each subsidiary must be shown on such exhibit. A form of clause referring to Exhibit B for insertion in the renegotiation agreement and a form of Exhibit B are set out in paragraph 741.2 subdivision (2). (See also paragraph 741.4.)

505. **Exhibit C.** If the provisions for payment of the cash refund or for other method of elimination of excessive profits are such as cannot be readily set out in Article 4 of the standard form of agreement, such provisions may be set out in an additional exhibit to the agreement, designated "Exhibit C" which should be attached to the agreement and incorporated therein by a reference thereto in Article 4 of the agreement.

506. **Additional Provisions: Variations.**

506.1 **In General.** The basic provisions of the standard form of agreement set forth in paragraph 741.1 of these Regulations are to be used in all cases except as otherwise noted in this paragraph 506. Additional provisions may be added when required to fit particular situations. Paragraph 741.2 of these Regulations contains forms of clauses which, when appropriate, should be used to meet certain of these special situations. Variations in language are permissible where necessary, but unless otherwise noted in this paragraph 506

in no event may any such change be made, or any provision be added to the agreement, when the effect would be to alter or modify the substance or intent of the basic provisions. The conclusion of the official signing the agreement on behalf of the Government pursuant to duly delegated authority that the agreement meets the requirements of this Regulation shall be evidenced by the fact of execution and shall be conclusive. (See paragraph 821.1.)

506.2 **Forward Pricing Clause.** The Renegotiation Act of 1943 specifically authorizes provision in the renegotiation agreement, by agreement with the contractor, for the elimination of excessive profits likely to be received or accrued in the future. When agreement cannot be reached upon specific price reductions, use may be made in the renegotiation contract of the article set forth at paragraph 741.2(1). In this connection reference is made to paragraph 430 and following. If specific price reductions are agreed upon, the agreement should clearly identify the contracts affected by such price reductions in order that the Department administering the agreement can determine whether the contractor has complied therewith.

506.3 **Anti-Discrimination Clause.**

(1) Executive Order No. 9346 dated May 27, 1943 requires "all contracts hereafter negotiated or renegotiated" to contain an article of the type set forth in paragraph 741.2(4) of these Regulations.

(2) Whenever a renegotiation agreement, executed under the Act, expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause, then the renegotiation agreement shall include the provision set forth in paragraph 741.2(4) of these Regulations. Except in such cases the requirements stated in (1) above do not apply to renegotiation agreements.

(3) If the renegotiation agreement is to be followed by a supplemental agreement or agreements modifying the terms of existing contracts with respect to future deliveries, each such supplemental agreement will provide for the inclusion in the contracts so modified, of the anti-discrimination clause.

506.4 **Clause to Be Used in Certain Cases Where Renegotiation Is Conducted on Completed Contract Basis.** Whenever renegotiation is conducted on a completed contract basis pursuant to the request of a contractor in the form therefor which is set forth in paragraph 723, the clause set forth in paragraph 741.2 (6) must be included in the renegotiation agreement. In each such case, a copy of such form executed by the contractor requesting renegotiation on a completed contract basis (paragraph 723) must be attached to the renegotiation agreement as an exhibit as provided in the clause set forth in paragraph 741.2 (6).

506.5 **Clause Covering Conditional Allowance of Cost.** If pursuant to the procedure set forth in paragraph 381.4 (4) of these Regulations, an item of cost is allowed conditionally pending final determination of its allowability as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code, an appropriate clause

will be inserted in the renegotiation agreement. The form of the clause may vary, but essentially it will consist of an agreement by the contractor to repay, as additional excessive profits, the amount of the item allowed as a cost in renegotiation which is finally determined to be not allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code. As pointed out in paragraph 381.4 (4), the clause must be approved by the Chairman of the Price Adjustment Board of the Department concerned before it can be used in the renegotiation agreement.

506.6 **Other Special Provisions.** Examples of additional special clauses are set out in the supplement to the standard form of agreement (paragraph 741.2). It is recognized that these provisions are not exclusive and that many circumstances will be encountered requiring other clauses and provisions. The form and substance of such provisions will be within the discretion of the Department conducting the renegotiation, subject to the limitation indicated in paragraph 506.1 of these Regulations.

507. **Prohibited Provisions.**

507.1 **Reservations Impairing Finality of Agreement.** No renegotiation agreement is acceptable if it or any authorizing resolution or letter of transmittal contains any reservation which might be interpreted as permitting the contractor to reopen the agreement if the Renegotiation Act is amended or declared unconstitutional, or interpretations of the Act are changed, or new exemptions are established or for any similar reason.

507.2 **Provision for Refund by the Government.** Other than recognition of the right to a renegotiation rebate in accordance with subsection (a)(4)(D) of the 1943 Act by reason of a future recomputation of the amortization deduction pursuant to section 124(d) of the Internal Revenue Code (see paragraph 502.10), no provision shall be made in any renegotiation agreement which would have the effect of requiring the Government under any circumstances to repay all or any part of any payment made to it thereunder.

507.3 **Periodic Refunds of Future Excessive Profits.** As part of the general policy of discouraging excessive prices and of encouraging price reductions, final agreements in renegotiation should not contain provisions for any periodic or other refunds by contractors of excessive profits realized after the date of such agreements. However, it is appropriate for such agreements to contain provisions for future price reductions or stated discounts from an agreed upon price.

508. **Clearances.**

508.1 **When Given.** If, as a result of renegotiation, it is found that no excessive profits have been received by or accrued to the contractor during the fiscal year under consideration, the contractor should be given a clearance for such year.

508.2 **Use and Form of Clearance Notice.**

(1) The form of clearance notice set forth in paragraph 742 should be used in all cases unless the contractor requests a formal clearance agreement.

(2) If any subsidiaries of the contractor are to be included in the clearance notice, appropriate modification may be made in the form.

(3) Whenever renegotiation is conducted on a completed contract basis pursuant to the request of the contractor made in the form therefor which is set forth in paragraph 723, the clearance notice will not be used. In such cases where it is determined that no excessive profits have been received or accrued, a clearance agreement (paragraph 508.3) will be used.

508.3 Use and Form of Clearance Agreement. Upon request of the contractor, a clearance agreement executed by the contractor and the Government may be used in place of the clearance notice. Such agreement should follow the general structure of the standard form of renegotiation agreement (see paragraph 506 and paragraph 741.1) except that Articles 3, 4, 5 and 9 of the standard agreement should be omitted. The articles used should be renumbered consecutively. The first article should be substantially the same as that contained in the standard form, except that the finding and agreement should be that no profits should be refunded pursuant to the Act. Whenever renegotiation is conducted upon a completed contract basis pursuant to the request of the contractor in the form therefor which is set forth in paragraph 723, the alternative clause set forth in paragraph 741.2 (6) will be included in the clearance agreement.

509. Administration of Determinations by Agreement or Order. It is the practice of the War Contracts Price Adjustment Board to have the Department to which the contractor was assigned for renegotiation also administer the resulting renegotiation agreement or unilateral determination. This practice results in such Department being responsible for the collection of any amounts due, the supervision of any forward pricing provisions in an agreement, and other matters involved in such administration.

510. Agreements for Periods Involving Different Acts. Should a contractor conclude renegotiation at the same time relating to a fiscal year ended on or prior to June 30, 1943 and a fiscal year ended subsequent to June 30, 1943, it will ordinarily be desirable to prepare separate agreements for each fiscal period. The first period is governed by the 1942 Act and the second period is governed by the 1943 Act. In the discretion of the Department conducting the renegotiation, one agreement may be used provided that in its form and execution the requirements of the Renegotiation Act of 1942 to the extent applicable and the requirements of the Renegotiation Act of 1943 to the extent applicable are observed. Such discretion may be exercised in the case of renegotiation on a contract basis of a long term contract or in such other cases as the Department conducting the renegotiation may deem suitable.

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623. **Authority of Departments to Make Unilateral Determinations.** The War Contracts Board has delegated to each Secretary the authority to issue and enter an order determining the amount of the excessive profits of a contractor who has not entered into an agreement to eliminate the same. (See paragraph 821.1.) Successive redelegations of such authority are authorized and have been made. Any such order entered pursuant to such delegated authority is, however, subject to review by the War Contracts Board. Upon the entry of such an order notice will be given forthwith by registered mail to the contractor and a copy of such order and notice shall be sent to the Secretary of the War Contracts Board at the address specified in paragraph 791.5. Such order will become final (that is, be deemed the determination of the War Contracts Board) when and as prescribed in subsection d (5) of the 1943 Act. (See paragraphs 621 and 625.) Forms which may be used with reference to such unilateral determinations under delegated authority are set out in paragraph 746, namely: order under delegated authority determining excessive profits (see paragraph 746.1), notice thereof (see paragraph 746.2) and notice of such order having become the determination of the War Contracts Price Adjustment Board (see paragraph 746.3).

624. **Procedure for Review by the War Contracts Board.**

624.1 **Review on Request by the Contractor.** A contractor who desires review by the War Contracts Board of a unilateral determination made under delegated authority should, promptly after notice of the order, and in any event within sixty days from the date of such determination, file a request for review. Such request should be addressed to the Secretary of the War Contracts Price Adjustment Board at the address specified in paragraph 791.5. Such request need not be in any particular form but should set forth:

(1) The name of the contractor.

(2) The fiscal period with respect to which the renegotiation has been conducted (or in the case of a renegotiation on a contract by contract basis, a description of such contracts and subcontracts).

(3) A brief summary of the issues involved.

624.2 **Review by the War Contracts Board on Its Own Motion.** Any order determining excessive profits made by delegated authority may be reviewed by the War Contracts Board on its own motion within sixty days from the date of such order.

624.3 **Discretion of the War Contracts Board.** Review by the War Contracts Board is not a matter of right but may be granted by the War Contracts Board in its discretion on timely request of the contractor or on its own motion.

624.4 **Nature of Review by the War Contracts Board.** The War Contracts Board may review an order determining excessive profits made pursuant to its delegated authority on the basis of the record theretofore made. In the event that the Board determines that a further conference is desirable, notice thereof will be given to the contractor.

625. **Finality of Orders Determining Excessive Profits.**

625.1 **Orders Made by Delegated Authority.** The War Contracts Board has reserved the right to review any order entered pursuant to any delegated authority determining excessive profits. Accordingly, no such order becomes final (that is, is deemed the determination of the War Contracts Board) until the earliest of the following:

(1) Sixty days after the order has been entered, if review is neither requested by the contractor concerned nor intiated by the War Contracts Board within that period; or

(2) Denial of review and adoption of the order by the War Contracts Board after timely request for review by the contractor (see paragraph 625.2); or

(3) Sixty days after the date of a timely request for review if such review is not granted by the War Contracts Board within that period.

625.2 **Orders Entered by the War Contracts Board.** Upon any review by the War Contracts Board whether pursuant to request by the contractor or initiated by the Board on its own motion, the Board will enter an order determining as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the order which has been reviewed. Such order of the War Contracts Board is final immediately upon its entry. A form which may be used for such order is set out in paragraph 747.1.

625.3 **Notice of Final Order to be Given to the Contractor.** When an order determining excessive profits made by delegated authority has become final or an order is entered by the War Contracts Board determining excessive profits (which, as stated in paragraph 625.2, is final upon entry), notice thereof will be given forthwith by registered mail to the contractor. Forms which may be used with reference to such notices are set out in paragraphs 746.3 and 747.2.

625.4 **Time to Appeal to Tax Court.** The ninety day period for filing a petition for redetermination in the Tax Court will run from the date of the mailing of the notice referred to in paragraph 625.3 in either of the cases referred to therein.

626. **Elimination of Excessive Profits Determined by Order.**

626.1 **Authorization to Secretaries to Eliminate Excessive Profits.**

(1) All of the powers, functions and duties conferred upon the War Contracts Board by subsection (c) (2) of the 1943 Act have been delegated by the Board under the date of February 26, 1944 to each Secretary with right of successive redelegation (see paragraphs 801.3 and 821.1). Among the methods available to each Secretary to eliminate excessive profits are reductions in amounts otherwise payable to the contractor under contracts with the Departments, withholding of amounts otherwise due the contractor, directing a contractor to withhold amounts otherwise due to a subcontractor, recovering through repayment, credit or suit, or any combination of the methods specified in such subsection as is deemed desirable.

(2) The power of each of the Secretaries to eliminate excessive profits by any of the methods or any combination of the methods referred to in subsection (c) (2) of the 1943 Act, including Clauses (A), (B), (C), (D) and (E) thereof, may be exercised by each Secretary in his discretion (or by such person or persons as may have authorization to act by delegation, subdelegation or otherwise) immediately upon the making of an agreement by or on behalf of the War Contracts Board, or the entry of an order which is, or which is deemed to be the determination of the War Contracts Board, or the entry of an order under subsection (e) by The Tax Court of the United States. Such power may be so exercised without further action by the War Contracts Board.

(3) The delegation dated February 26, 1944 by the War Contracts Board delegated all the authority referred to in this paragraph. (See paragraph 821.1.)

(4) A form which may be used to direct a contractor to withhold and a form which may be used to direct a contractor to pay over amounts withheld are found in paragraphs 748.1 and 748.2. (See also paragraphs 423 and 502.5 (4).)

626.2 No Delay in Elimination of Excessive Profits Determined by Order.

(1) Under a renegotiation agreement, provision is frequently made for the elimination of the excessive profits over a period of time by refunds in installments or by other provisions. But if excessive profits are determined by order, no provision will be contained in such order for deferment of the obligation thereby created or any part thereof. The collection of the amount called for by such an order will be effected in accordance with the general principles governing the enforcement and collection of obligations owing to the United States as supplemented by the special powers and procedures contained in the Renegotiation Act.

(2) The filing of a petition in The Tax Court of the United States for a redetermination does not operate to stay the execution of the order determining excessive profits (see subsection (e) (1) of the 1943 Act).

626.3 Elimination of Excessive Profits Determined by the Tax Court. Any excessive profits determined by order of the Tax Court in proceedings for redetermination and which have not theretofore been eliminated will also be eliminated by appropriate action. (See paragraph 637.)

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CHAPTER VII

FORMS FOR RENEGOTIATION

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702. Letters of Preliminary Inquiry.

702.1 Letter of Preliminary Inquiry (For Use by Assignments and Statistics Branch).

In reply refer to:
LPI No. .....

War Contracts Price Adjustment Board
Joint Price Adjustment Board
Room 3D 573, The Pentagon
Washington 25, D. C.

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish to the undersigned the information called for by the "Standard Form of Contractor's Report." On the basis of information thus presented a determination will be made as to whether or not renegotiation proceedings will be commenced.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report", which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed, in duplicate, within thirty days of the date of this letter. It is to be sent to the undersigned, Room 3D 573, The Pentagon, Washington 25, D. C. If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board
Joint Price Adjustment Board

Enclosures:

Standard Form of Contractor's Report (3)
Instructions for Preparation of
Standard Form of Contractor's Report
Pamphlet containing Renegotiation Act of 1942 and 1943

702.2 Letter of Preliminary Inquiry (For Use in Assigned Cases).

(For use in cases already assigned)

In reply refer to:
LPI-A No.....

(Letterhead of Appropriate Department or Section)

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

The matter of conducting your statutory renegotiation proceedings has been assigned to this office.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish the information called for by the "Standard Form of Contractor's Report." On the basis of the information thus presented, a determination will be made as to whether or not further renegotiation proceedings will be necessary.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report" which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act, if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed with the undersigned, in duplicate, within thirty days of the date of this letter. If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

If all of the information called for by this form has been furnished the Price Adjustment Agency to which the contractor has been assigned, refer to the final paragraph of instructions.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

(Appropriate Authorized Signature)

Enclosures:

Standard Form of Contractor's Report (3)
Instructions for Preparation of
Standard Form of Contractor's Report
Pamphlet containing Renegotiation Act of 1942 and 1943

702.3 Inquiry Concerning Non-filing of Mandatory Financial Statement.

War Contracts Price Adjustment Board
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

Subsection (c) (5) (A) of the Renegotiation Act of 1943 requires concerns which are subject to that Act to file financial statements in accordance with the regulations prescribed by the War Contracts Price Adjustment Board. A penalty is prescribed for non-compliance. Copies of the Act and pertinent Regulations are enclosed herewith as well as the required form of Report.

The records of this office do not indicate that you have filed such a financial statement. Although without authority to waive or extend the requirements of the Act with respect to time of filing, we bring this matter to your attention with the suggestion that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the required financial statement with the least possible delay.

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board

Enclosures:

Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements

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702.4 Follow-up to Letter of Preliminary Inquiry from Assignments and Statistics Branch.

In reply refer to:
LPI No. .....

War Contracts Price Adjustment Board
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

We attach a copy of a communication sent to you under date of ..... by which we requested that you file with this office the "Standard Form of Contractor's Report" which was enclosed therewith. We have no record of your having filed such a Report nor of the receipt of a statement from you that the Renegotiation Act of 1943 is not applicable in your case.

Your attention is called to the fact that by the provisions of subsection (c) (5) (A) of the Act, the "Standard Form of Contractor's Report" is required to be filed by all concerns subject to that Act. A penalty is prescribed for non-compliance.

Although without authority to waive or extend the requirements of the Act with respect to the time for filing of Reports, we suggest that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the Report with the least possible delay.

On the other hand, if your business did not exceed the statutory minimum as defined in subsection (c) (6) of the Act, you are not required to file the "Stand-

ard Form of Contractor's Report" to which we refer. In that event, it would be helpful for the maintenance of our records if you would file, in duplicate, the enclosed form entitled "Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943".

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board

Enclosures:

(Budget Bureau No. 49-R182) (LP1 Letter)
Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements
Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943

703.3 Form No. 103 (Suggestion for Reassignment).

To Be Submitted in Quadruplicate

To: Assignments and Statistics Branch
War Contracts Price Adjustment Board
Room 3D 573, The Pentagon
Washington, D. C.

Subject:

1. The above contractor has been assigned to this office for renegotiation of its 1943 fiscal year. Reassignment is suggested for the following reasons(s):

☐ Principal war product.....
☐ Substantial predominance of interest in contracts held by.....
☐

2. The above contractor (has) (has not) been consulted with respect to proposed reassignment and (has) (has not) indicated approval.

PRICE ADJUSTMENT BOARD (SECTION)

1st Ind.

To: Price Adjustment Board (Section)

☐ The above contractor is hereby reassigned to .....
☐ It is deemed inappropriate to reassign the above contractor.

For the Director of the Renegotiation Division:

Chief, Assignments and Statistics Branch

24-64951

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704. Forms for Cancellation of Assignment.

704.1 Statement by Contractor of Non-Applicability.

STATEMENT BY CONTRACTOR

Non-Applicability of the Renegotiation Act of 1943

To the War Contracts Price Adjustment Board:

We acknowledge receipt of a copy of the pamphlet entitled "Renegotiation" containing the text of the Renegotiation Act of 1943 and have noted particularly the provisions of subsections (a) (5), (c) (5) (A) and (c) (6) of that Act.

We certify that the aggregate receipts or accruals of the undersigned and of all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts with the War Department, Navy Department, Treasury Department, Maritime Commission, War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Company and Rubber Reserve Company and under subcontracts as defined in the Act, *including* those which are exempted under subsection (i) of the Act or which expressly provide that they are not subject to renegotiation pursuant to the authority granted by said subsection (i) (but not including commissions and other income within the meaning of subsection (a) (5) (B) of the Act), did not exceed $500,000 for the fiscal year ended ..... 194....; and we further certify that commissions and other income within the meaning of subsection (a) (5) (B) of the Renegotiation Act of 1943 received or accrued by the undersigned and by all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts and subcontracts above referred to did not exceed $25,000 for the same fiscal year.

In making this certification recognition is given to the fact that in order to qualify for exemption it is necessary that both of the above conditions should be met; i. e., that the total of receipts and accruals under contracts with the above-named Departments or agencies or subcontracts as defined in the Act (excluding commissions and other income below mentioned) does not exceed $500,000 *and* that the total of commissions and other income within the meaning of subsection

(a) (5) (B) of the Act does not exceed $25,000. Accordingly, we do not intend to file a financial statement in conformity with the provisions of the first sentence of subsection (c) (5) (A) of the Act. If we have been assigned for statutory renegotiation, we request that such assignment be cancelled.

Very truly yours,

.....
Name of Contractor

By .....
(Principal officer, partner or proprietor)

.....
Title of officer

.....
Address of Contractor

Dated ..... 194....

In preparing this form, there will be printed on reverse side, subsections (c) (5) (A), (c) (6) and (a) (5) of the 1943 Act.

704.2 Notice to Contractor of Cancellation of Assignment.

NOTICE TO CONTRACTOR OF CANCELLATION OF ASSIGNMENT

Date .....

Contractor's Name
Address

Dear Sir:

Upon review of the information submitted by you in connection with renegotiation under the Renegotiation Act, as amended, this office recommended to the War Contracts Price Adjustment Board that your assignment to this office for renegotiation be cancelled for your fiscal year ending .....

This office is advised that such assignment has been cancelled in accordance with its recommendation.

While such cancellation does not operate as a release of liability under the Renegotiation Statute, nevertheless, in the absence of further developments no further action is contemplated.

Very truly yours,

(*Name of Renegotiating Department or Service*)

704.3 Request by Renegotiating Agency for Cancellation.

See paragraph 206.2

EXHIBIT 2

.....
Name of Contractor

.....
Address of Contractor

COMPARATIVE STATEMENT OF INCOME

This form and accompanying data are to be submitted only by contractors who have not been previously renegotiated.

	Years ended ..... (In even thousands of dollars)					
	19..	19..	19..	19..	19..	19..
1. Net sales (excluding sales or billings under cost-plus-fixed-fee contracts)	$	$	$	$	$	$
2. Cost of sales						
3. Gross profit						
4. Selling and advertising expenses						
5. General and administrative expenses						
6. Operating profit						
7. Per cent margin (ratio of line 6 to line 1)	%	%	%	%	%	%
8. Other applicable items:						
a. Interest paid						
b. Other applicable deductions						
c. Other applicable income						
9. Basic profit on fixed price contracts						
10. Per cent margin (ratio of line 9 to line 1)	%	%	%	%	%	%
11. Other income:						
a. Net fees earned under CPFF contracts						
b. Other						
12. Other deductions						
a. State taxes measured by income						
b. Other						
13. Net profit before provision for Federal taxes on income and extraordinary reserves						
14. Provision for Federal taxes on income—gross						
15. Post war refund of excess profits tax (credit)						
16. Net profit before extraordinary reserves						
17. Per cent of net worth at start of period	%	%	%	%	%	%
18. Provisions for extraordinary reserves						
19. Net income per books	$	$	$	$	$	$

INSTRUCTIONS:

1. This schedule is to be prepared for each of the seven years immediately prior to that under review.
2. Insofar as practicable, the amounts appearing under the various line captions should reflect items similar to those shown on Exhibit 1, so that true comparisons may be made.
3. If regular annual statements contain the information listed above, such statements may be submitted in lieu of this form.

See Reverse of Form for Supplemental Information Required

SUPPLEMENTAL INFORMATION

To be submitted only by contractors who have not been previously renegotiated.

1. If a corporation, state in which incorporated and date of incorporation; if a partnership or proprietorship, date of inception.

2. A brief history of the business, at least since 1936.

3. Balance sheets, as at the close of each of the contractor's fiscal years ended in 1936 to 1942, inclusive, or at the close of each year for which income data are submitted.

4. Comparative statement of income for each of the contractor's fiscal years ended in 1936 to 1942, inclusive, or for such of those years as he was in business. (Exhibit 2)

5. A statement of cost of sales and selling and administrative expenses for the three latest prior years, similar in form to items 22 and 24 of Exhibit 1-a. (See Instructions for Exhibit 1-a).

6. A statement of salaries and other compensation of officers and employees for the three latest prior years (similar to that in Section G-1).

7. Copy of Federal Income and Excess Profits Tax Return for the contractor's latest prior year, and a summary of any significant changes in taxable income since 1936, made as a result of examinations by the Bureau of Internal Revenue.

8. Explanation of any differences between the subsidiaries and affiliates, consolidated in Exhibit 2, and those which are consolidated in the financial statements for the current year.

9. A statement relative to each of the following:
   a. basic changes in accounting methods since 1936;
   b. revaluation of assets or recapitalization since 1936.

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723. Contractor's Request for Renegotiation on Completed Contract Basis.

To: .....
(Insert name of Price Adjustment Board or Section.)

1. .....
(Insert correct legal name of contractor and indicate whether an individual, partnership, joint venture or corporation.)

(hereinafter referred to as "the contractor") represents as follows:

(a) that the contractor has a fiscal year ended..... (hereinafter referred to as "said fiscal year");

(b) that all of the contractor's construction contracts and subcontracts which have been completed within said fiscal year are as follows:

Description and Date	*Amount*
.....	.....
.....	.....
.....	.....

2. Pursuant to subsection (c) (1) of the Renegotiation Act, the contractor hereby requests that all of the construction contracts and subcontracts described in paragraph 1 (b) above be renegotiated as a group and that the powers of the War Contracts Price Adjustment Board be exercised with respect to such group.

3. If the foregoing request is approved, the contractor hereby agrees to the following terms and conditions:

(a) The Renegotiation Act, and all regulations and interpretations made thereunder, other than those dealing with the allowance of tax credits, will be applied in all respects to the construction contracts and subcontracts described in

paragraph 1 (b) above and in determining profits derived therefrom, as though the contractor had kept (its) (his) books and had filed (its) (his) Federal income tax returns with respect to such contracts and subcontracts on a completed contract basis, including the application of the $500,000 exemption set forth in subsection (c) (6) of the Renegotiation Act and the application of the $500,000 "floor" as interpreted in paragraph 348.3 of the Renegotiation Regulations.

(b) With respect to any subsequent fiscal year, all of the contractor's construction contracts and subcontracts completed within such fiscal year, which are by law subject to renegotiation, may at the option of the renegotiating agency be renegotiated as a group and the powers of the War Contracts Price Adjustment Board may at such option be exercised with respect to such group, and in any such renegotiation, the principles set forth in subparagraph 3 (a) above will be applied.

4. The undersigned agrees that this request, after having been delivered to the renegotiating agency, cannot be withdrawn without the written consent of the renegotiating agency.

IN WITNESS WHEREOF, the undersigned has executed this request as of the ..... day of ..... 194..

.....

By .....
(Title of Officer)

ATTEST:

.....
(Secretary)
(To be used if executed by a corporation.)

APPROVED:

.....
(Insert name and official title of person executing the approval in behalf of the government.)

NOTE: If the contractor is a corporation, the request will be accompanied by a certified copy of the resolution of the Board of Directors authorizing the request and the agreements therein contained. If a partnership or joint venture the request will be executed by all members of the partnership or joint venture.

724. Reserved.

725. Agreement Extending Time for Completion of Renegotiation.

..... 194..

It is hereby stipulated and agreed by and between the United States of America and .....
a ..... with principal business office at ..... (hereinafter referred to as the "Contractor"), as follows:

(1) Renegotiation pursuant to the Renegotiation Act between the War Contracts Price Adjustment Board or its duly authorized representative and the Contractor with respect to amounts received or accrued by the Contractor for the Contractor's fiscal year ended ..... was commenced ..... 194..

(2) In accordance with the provisions of clause (B) of the second sentence of subsection (c)(3) of the Renegotiation Act, the time within which a determination of the amount of excessive profits, if any, derived by the Contractor from contracts with the Departments and subcontracts for the Contractor's fiscal year ended ..... may be made by agreement or order is hereby extended to and including ..... 194....

.....
(Name of Contractor)

by .....
(Title)

If a corporation add
(Corporate Seal)

ATTEST:

.....
Secretary

UNITED STATES OF AMERICA

by .....

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Section 4

FORMS RELATING TO AGREEMENTS AND UNILATERAL DETERMINATIONS

741. Agreement Forms.

741.1 Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ..... day of ....., 194.., by and between the UNITED STATES OF AMERICA (hereinafter referred to as "the Government") and .....
.....,
* a corporation organized and existing under the laws of the state of .....,
* co-partners, doing business under the firm name of .....,
* a sole proprietor, doing business under the name of .....,
having its principal office at .....
..... (hereinafter referred to as "the Contractor").

1. *Profits to be Eliminated.* As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ..... Dollars ($.....) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended ....., 194.., (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.

2. *Warranty.* This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. *Tax Credit Under Section 3806 of the Internal Revenue Code.* The Contractor represents that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. *Terms of Payment.* The Contractor agrees to pay to the Government the sum of ..... Dollars ($.....), being the amount determined in Article 1 hereof to be eliminated, as follows:

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....** All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default

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* Delete inapplicable language.

** If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, insert here: "to the extent of $..... and by check to the order of and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of $....."

continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment due under this agreement from and after the due date thereof, whether original or accelerated.

5. *Additional Profits to be Eliminated.* If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to ..... of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. *Covenant Against Contingent Fees.* The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. *Officials Not To Benefit.* No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. *Discharge of Liability.* This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. *Renegotiation Rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. *Execution of Agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in ..... counterparts as of the day and year above written.

(Corporate Seal if a Corporation)

By .....
(Title of Officer)

ATTEST:

.....
Secretary

(To be used if executed by a corporation)

UNITED STATES OF AMERICA

By .....
(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Each exhibit attached hereto is to be initialed for identification by the persons signing on behalf of the Contractor.

A duly certified copy of the resolution of the Board of Directors of the Contractor, if a corporation, authorizing the execution and delivery of this agreement is to be attached hereto.

741.2 Variations in the Standard Form.

(1) *Forward Pricing.* When agreement cannot be reached upon specific price reductions, use may be made of the following clause:

"The Contractor agrees that so long as it shall have contracts and subcontracts which are by law subject to renegotiation, it will from time to time adjust its prices under such contracts and subcontracts to eliminate the accumulation of profits thereunder regarded by the Contractor as excessive. Within twenty days after the close of that quarter of the Contractor's current fiscal year in which the Contractor has received a fully executed counterpart of this agreement, the Contractor agrees to file with .....
.....
.....
a report setting forth the price reductions, if any, made during all then expired quarters of such current fiscal year applicable to its contracts and subcontracts subject to renegotiation. The Contractor further agrees to file a similar report within twenty days following each subsequent quarter of its current fiscal year setting forth its price reductions, if any, made during such quarter. Each such report may be in such general terms or in such detail as the Contractor deems necessary to an intelligent appraisal thereof, but shall set forth, if feasible, the unit prices before and after each such reduction, and shall set forth an estimate of the aggregate reduction effected thereby for such fiscal year under contracts and subcontracts subject to renegotiation; and shall include, if available, a summary profit and loss statement for the period covered by the report. It is understood and agreed that price reductions will be taken into consideration in any renegotiation which may hereafter be conducted with the Contractor with respect to its current fiscal year, but that, with respect to periods subsequent to the date of this agreement, the obligations of the Contractor under this article will not be deemed to be satisfied by refunds or retroactive price reductions.

"Failure on the part of the Contractor to comply fully with this article shall not constitute grounds for reopening this agreement or for setting aside the discharge provided for in Article 8 hereof."

(2) *Variations in Article 2 of the Standard Form.* When the renegotiation covers a parent and subsidiaries the following clause should be *added* to Article 2 of the standard form of agreement by insertion after the first paragraph of Article 2:

"Exhibit B annexed hereto and made a part hereof contains a complete list, as represented by the Contractor, of its subsidiaries, all of which are consolidated with the Contractor for the purposes hereof, except such, if any, as may be expressly excluded from such consolidation, as indicated by proper notation on said Exhibit B. Also noted on Exhibit B is the part, if any, of the profits to be eliminated which is allocated to each subsidiary so consolidated with the Contractor. The part unallocated to subsidiaries is allocated to the Contractor."

Such exhibit may take the following form:

"

Exhibit B

List of, and Allocation of, Profits to be Eliminated among Subsidiaries of Contractor included in the Renegotiation

Subsidiaries (1)	Allocation of Profits to be Eliminated (2)

"

Notes:

(1) Give State of incorporation of each subsidiary

(2) Allocation of profits should be in dollar amounts.

(3) *Variations in Article 3 of the Standard Form.*

(a) If the contractor has not filed his Federal income or income and excess profits tax returns, or has filed the return but has not included in income as reported therein the profits to be eliminated, the following provisions should be used in lieu of the provisions of Article 3 as contained in the standard form of agreement:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code: The amount of profits agreed in Article 1 hereof to be eliminated has not been included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and, accordingly no tax credit under Section 3806 of the Internal Revenue Code is allowed against the amount of such profits to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of profits agreed in Article 1 hereof to be eliminated, or any part thereof, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(b) In some instances, a contractor will have included in income as reported in his tax returns less than all of the profits to be eliminated. In such a case Article 3 should be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor represents that of the profits agreed in Article 1 hereof to be eliminated $..... were included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of the profits agreed in Article 1 hereof to be eliminated and which were excluded from income in the Contractor's income tax return (or income and excess profits tax returns) for said fiscal year, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(c) In the case of a partnership, the tax credit applicable against the amount of the profits to be eliminated is the aggregate of the credits to which each of the partners is entitled. Accordingly, in such a case Article 3 may be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. Each of the partners comprising the Contractor represents that his proportionate share of the profits, the amount of which is agreed in Article 1 hereof to be eliminated, was included in his income for his taxable year in which said fiscal year ended in computing his total tax in his Federal income tax return for said taxable year. Each of such partners has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which his taxes for such taxable year under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The aggregate of the amounts, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated."

(4) *Anti-Discrimination Clause.* Whenever a renegotiation agreement executed under the Act expressly purports to modify the terms of specified existing

prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause then the agreement shall include the following provision:

"Anti-discrimination.—(a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

"(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work, to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract."

(5) *Variations in Article 4 of the Standard Form.*

(a) If the profits to be eliminated are to be paid in installments, and the amount of the tax credit has not been ascertained, Article 4 may be drafted to read as follows:

"4. Terms of Payments. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3, as follows:

(a) $....., less the pro rata portion of the tax credit applicable thereto, within ten days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later; and

(b) $....., less the pro rata portion of the tax credit applicable thereto, on or before ..... or the due date of the first scheduled payment, whichever shall be later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(b) If the amount of the tax credit has been ascertained before the agreement is drawn, Article 4 may be drafted to read as follows:

"4. Terms of Payment. The Contractor agrees to pay to the Government the sum of ..... ($.....), being the difference between the amount agreed in Article 1 hereof to be eliminated and the amount of the tax credit referred to in Article 3 which has been determined to be applicable thereto, as follows:

$..... within ten days after the Contractor shall have received a fully executed counterpart of this agreement, and

$..... on or before .....; and

$..... on or before .....

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(6) *Clause to Be Used in Connection with Renegotiation on a Completed Contract Basis in Certain Cases.* Whenever renegotiation is conducted on a completed contract basis pursuant to the request of the contractor in the form therefor which is set forth in paragraph 723, the following clause will be inserted in the renegotiation agreement:

"Renegotiation of Construction Contracts and Subcontracts on Completed Contract Basis. At the request of the contractor and with the consent of the renegotiating agency, the renegotiation concluded by this agreement was conducted on a completed contract basis with respect to the construction contracts and subcontracts of the contractor completed within said fiscal year. A copy of said request dated ..... is attached hereto as Exhibit ....., incorporated herein by reference as though set forth herein, and the contractor hereby agrees to be bound by all of the undertakings and conditions set forth in said request."

741.3 Contents of Exhibit "A" to the Standard Form of Agreement. Exhibit "A" referred to in the Standard Form of Agreement shall contain, as a minimum, the following financial data and information:

(1) The amount of net sales under fixed price contracts in the aggregate and segregated as between renegotiable and non-renegotiable business.

(2) The net profit on each such amount of fixed price business before Federal taxes on income.

(3) The aggregate amount of billings under cost-plus-fixed-fee contracts subject to renegotiation (i. e., costs plus gross fees).

(4) The net fees earned under renegotiable cost-plus-fixed-fee contracts before Federal taxes on income.

(5) The amount of adjustment in the profits to be eliminated on account of taxes other than Federal taxes measured by income.

(6) The amount of profits to be eliminated shown separately as to fixed price and cost-plus-fixed-fee business. If any part of the profits to be eliminated were derived from prime contracts with RFC subsidiaries, such part of such profits shall be indicated.

The form of the exhibit and the manner in which such financial data and information shall be shown shall be within the discretion of the Department which has conducted the renegotiation. In the discretion of such Department, any additional financial data or information may be included in Exhibit "A".

741.4 Contents of Exhibit "B" to the Standard Form of Agreement. See paragraph 741.2 subdivision (2).

741.5 Contents of Exhibit "C" to the Standard Form of Agreement. See paragraph 505.

742. Clearance Notice.

Form .....

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

Clearance

....., 194.....

To:

As a result of renegotiation pursuant to the Renegotiation Act, between the United States of America (hereinafter referred to as "the Government") and

.....
(If not a corporation, insert proper description)

.....

.....

corporation having its principal office at ..... in the City of ....., State of ..... (hereinafter referred to as "the Contractor"), it has been determined that no excessive profits have been received by or accrued to the Contractor during the Contractor's fiscal year ended ..... (hereinafter referred to as "said fiscal year"), from contracts and subcontracts of the Contractor which are subject to renegotiation pursuant to the Renegotiation Act and which were included as renegotiable business in the financial and other data upon which this determination is based (hereinafter referred to as "said contracts and subcontracts").

The determination and discharge herein are based upon data submitted by the Contractor including a statement of income and other financial data for said fiscal year.

This instrument shall constitute a final determination that no excessive profits have been received by or accrued to the Contractor during said fiscal year from said contracts and subcontracts and shall finally discharge the Contractor of any liability under the Renegotiation Act for excessive profits derived during said fiscal year from said contracts and subcontracts, subject, however, to the right of the Government or its duly authorized representative, to reopen this renegotiation and modify or annul the determination and discharge herein upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, including a willful omission by the Contractor to state a material fact required to make any representation of the Contractor not misleading.

This determination and discharge shall not be effective with respect to any amounts heretofore or hereafter received by the Contractor under any of the contracts or subcontracts of the Contractor which are subject to renegotiation unless such amounts were reflected in income for said fiscal year in the financial data submitted by the Contractor and upon which the determination and discharge herein are based.

This determination and discharge are made upon the conditions that (a) no member of or delegate to Congress or resident commissioner, or any other person in the employ or service of the United States, shall be admitted to any share or part of this instrument or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this instrument if made with a corporation for its general benefit, and (b) the Contractor has not employed any person to solicit or secure this instrument upon any agreement for a commission, percentage, brokerage or contingent fee; and (c) the Contractor will notify the War Contracts Price Adjustment Board promptly of the receipt of any amounts paid to the Contractor under any of the contracts or subcontracts referred to above, which amounts are applicable to said fiscal year and which were not reflected in income

for said fiscal year in the financial data submitted by the Contractor. Breach of any of the foregoing conditions will give the Government the right to annul this determination.

*

UNITED STATES OF AMERICA

By .....
(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

---

* If subsidiaries of the contractor with like fiscal years are to be included in the clearance notice, add the following sentence:

"This instrument also applies to the ..... subsidiaries of
(insert number)
Contractor listed on the reverse hereof, as if each were named as Contractor in a separate instrument of like tenor."

Then list the names of the subsidiaries on the reverse side of the clearance notice. If space permits, it is preferable to list them in the inserted paragraph on the face and vary the insertion appropriately. Should corporations with like fiscal years which are affiliated with the Contractor be included in the clearance notice, the suggested insertion should be varied accordingly.

743—745. Reserved.

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746. Unilateral Determination—Delegated Authority.

746.1 Order Under Delegated Authority Determining Excessive Profits.

ORDER UNDER DELEGATED AUTHORITY DETERMINING EXCESSIVE PROFITS

Pursuant to authority duly delegated by the War Contracts Price Adjustment Board, a renegotiation proceeding was duly commenced with .... (hereinafter called the "Contractor") with respect to the aggregate of the amounts received or accrued by the Contractor under contracts with the Departments and subcontracts as defined in the Renegotiation Act (such contracts and subcontracts being hereinafter collectively referred to as "said contracts with the Departments and subcontracts") for the Contractor's fiscal year ended ..... (hereinafter called "said fiscal year").

In connection with such renegotiation proceeding, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal year. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act.

In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act.

As a result of such renegotiation it is hereby determined that ..... Dollars ($.....) represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year, which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, it is hereby determined that the amount of excessive profits of the Contractor which should be eliminated is ..... Dollars ($.....).

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d)(5) of the Renegotiation Act. If, and as soon as, this order shall be deemed the determination of the War Contracts Price Adjustment Board, pursuant to subsection (d)(5) of the Renegotiation Act, then ..... (or such
(Secretary of a Department)
official or officials in such Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and Entered on

..... 194..

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.2 Notice of Order Under Delegated Authority Determining Excessive Profits.

NOTICE OF ORDER UNDER DELEGATED AUTHORITY
DETERMINING EXCESSIVE PROFITS

..... 194..

Gentlemen:

You are hereby notified by registered mail that pursuant to renegotiation under the Renegotiation Act, and in accordance with authority delegated by the War Contracts Price Adjustment Board, ... acting in its behalf, issued and entered an order on ..... 1944, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended .....,
..... Dollars ($.....) represents excessive profits which should be eliminated. A copy of such order is enclosed herewith.

As provided in the Renegotiation Act such order may, in the discretion of the War Contracts Price Adjustment Board, be reviewed by such Board upon your request or upon its own motion, but unless such review shall have been initiated within the time prescribed by the Renegotiation Act, such order shall be deemed the determination of the War Contracts Price Adjustment Board.

Yours very truly,

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.3 Notice of Order Having Become the Determination of the War Contracts Price Adjustment Board.

NOTICE OF ORDER HAVING BECOME THE DETERMINATION OF THE WAR CONTRACTS PRICE ADJUSTMENT BOARD

..... 194..

Gentlemen:

You are hereby notified that no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on ..... 194.., pursuant to renegotiation under the Renegotiation Act, by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on .....

The payment date for discharge of your obligation under such order is ..... (Here insert date approximately 15 days from the date such order is deemed the determination of the War Contracts Price Adjustment Board.) Unless payment is made on or before such payment date, interest shall be paid at the rate of 6% per annum from such payment date.

Demand is hereby made that you repay, on or before such payment date, such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

**.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

---

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

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747. Action by the War Contracts Price Adjustment Board After Review.

747.1 Order.

ORDER BY THE WAR CONTRACTS PRICE ADJUSTMENT BOARD AFTER REVIEW

..... 194..

Upon review of an order issued and entered ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining

..... Dollars ($.....) as the amount of excessive profits which should be eliminated, derived by ..... (hereinafter called the "Contractor") from contracts with the Departments and subcontracts as defined in the Renegotiation Act, for the Contractor's fiscal year ended....., and after taking into consideration all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act, the War Contracts Price Adjustment Board has determined that ..... Dollars ($.....) represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for the Contractor's fiscal year ended ....., which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the profits of the Contractor derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, the War Contracts Price Adjustment Board hereby determines that the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is ..... Dollars ($.....).

This order constitutes a determination by the War Contracts Price Adjustment Board upon review as provided by subsection (d)(5) of the Renegotiation Act. The ..... (or such official or officials in such
Secretary of a Department

Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and entered on

..... 194..

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

747.2 Notice.

NOTICE OF DETERMINATION BY ORDER ENTERED BY WAR CONTRACTS PRICE ADJUSTMENT BOARD UPON REVIEW

..... 194..

Gentlemen:

You are hereby notified that upon review of an order dated, issued and entered on ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has issued and entered its order determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on .....

The payment date for discharge of your obligation under such order is ..... (Here insert date approximately 15 days from the date of such order.) Unless payment is made on or before such payment date, interest shall be paid at the rate of 6% per annum from such payment date.

Demand is hereby made that you repay, on or before such payment date, such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

** .....

Title

Acting on behalf of the

.....

(Secretary of a Department)

---

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

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748. Withholding Orders.

748.1 Direction to a Contractor to Withhold.

..... 194

Gentlemen:

Pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has determined that $..... of the profits derived by ..... from contracts with the Departments and subcontracts for the fiscal year ended ..... are excessive profits which should be eliminated.

In accordance with the Renegotiation Act, the War Contracts Price Adjustment Board has authorized and directed the undersigned to eliminate such excessive profits. Accordingly, you are hereby directed to withhold for the account of the United States, pursuant to subsection (c)(2) of the Renegotiation Act, any and all amounts not in excess of $..... otherwise due or which shall become due from you to said .....

This direction shall be effective immediately and shall continue in effect until further notice from the undersigned.

You are directed further to report in writing to the undersigned within fifteen days from the date hereof the amount, if any, withheld by you for the account of the United States pursuant hereto.

Yours very truly,

.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

748.2 Direction to a Contractor to Pay Over Amounts Withheld.

..... 194..

Gentlemen:

Pursuant to direction issued under subsection (c)(2) of the Renegotiation Act you have, as you have reported to the undersigned, withheld for the account of the United States from amounts otherwise due to ....., the sum of $.....

You are hereby authorized and directed to pay over said sum to the United States by delivery to the undersigned of a check in said amount, payable to the order of the Treasurer of the United States.*

As provided in said subsection (c)(2) of the Renegotiation Act you are indemnified by the United States against all claims by said .... on account of such amount withheld.

Yours very truly,

.....
Title

Acting on behalf of the

.....
(Secretary of a Department)

---

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

[The next page is 771.]

(3) Summary of the Relevant Facts.

(a) Financial Comparisons.

(i) There shall be made part of this statement comparative financial statements of the contractor which may be in the form of exhibits attached to the statement. If exhibits are used, they should be described and referred to in this part of the statement.

(ii) Comparative balance sheets prepared from those furnished by the contractor, as of the end of the fiscal year 1936 and of each fiscal year thereafter up to and including the fiscal year under review, shall be included.

(iii) Comparative income statements for the same fiscal periods shall be included.

(iv) The statements shall be supplemented by such statistical data related to the fiscal periods as may be deemed pertinent to the renegotiation.

(v) Any disallowance (or additional allowance) as compared with costs shown on the contractor's books shall be indicated.

(vi) The financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted in the discretion of the Department giving a statement furnished after a determination by agreement. In such case, the statement should refer to Exhibit A to the renegotiation agreement (see paragraph 741.3) and also to the contractors annual earnings before taxes for the fiscal year 1936 and for each fiscal year thereafter up to and including the fiscal year under review, to the extent that such information is available and pertinent. When the statement is furnished after a determination by agreement, documentary information furnished by the contractor and properly identified, relating to the financial comparison referred to in subparagraphs (ii) and (iii) above may be incorporated by reference.

(vii) In the case of a statement furnished after a determination by agreement or order, the financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted to the extent information therefor is not made available to the renegotiating officials by the contractor.

(b) Other Facts Related to the Determination.

The statutory factors required to be taken into consideration by subsection (a) (4) (A) of the Renegotiation Act of 1943 must receive consideration and the basic facts related thereto set forth, whether favorable or unfavorable to the contractor. The basic facts will be those resulting from consideration of the data submitted or assembled for the purpose of the renegotiation. Any other facts considered and pertinent to the consideration of the determination shall also be set forth.

(4) Reasons for the Determination.

A statement shall be made of the reasons for the determination in the light of all of the facts and factors referred to in the foregoing portions of the statement, indicating generally the relative significance and importance of such facts and factors. Return on net worth shall

be computed before deductions for Federal income taxes and be based on that portion of the net worth determined to have been used in connection with the performance of renegotiable contracts. If this is not practicable, reference to net worth shall be omitted. Such matters as (a) profits on non-renegotiable business and (b) profits after Federal taxes do not constitute factors or reasons to be taken into consideration in the renegotiation proceeding or included in the statement to be furnished to the contractor, although such figures are frequently included in the financial data submitted by the contractor and attached as exhibits to the statement.

752.3 Substitute Paragraphs for the Statement Where Statutory Determination Has Not Yet Been Made.

(1) Designation of the Contractor and Purpose of Statement To .....
(Contractor's name and address)

Fiscal Year .....

You are hereby furnished with a statement of the facts and reasons upon which the opinion of (name of Board or Section) as to the amount of excessive profits for your fiscal year above set forth was based. Such statement is furnished for the purpose of assisting you in determining whether or not you wish to enter into an agreement providing for the elimination of such excessive profits. It is not a statutory statement as provided in subsection (c) (1) of the Renegotiation Act.

(2) Statement of Opinion of Excessive Profits.

In the opinion of (name of Board or Section) the amount of excessive profits received or accrued by you during such fiscal year under contracts or subcontracts subject to renegotiation is $.....

(3) Summary of the Relevant Facts.

The instructions of paragraph 752.2 (3) applicable to a statement after a determination by agreement apply also to a statement where a statutory determination has not yet been made. In such case, Exhibit A to the renegotiation agreement may be referred to as a preliminary draft and submitted to the contractor in such form (see paragraph 752.2 (3) (vi)).

(4) Reasons for the Determination.

See paragraph 752.2(4).

753. Summary of Financial Data—Spread Sheet.

[Actual size of form 7" x 13"]

NAME AND ADDRESS OF CONTRACTOR

CORP. ( ) PART. ( ) PROP. ( )

FISCAL YEAR ENDED _____ 194__

RENEGOTIATED BY | DATE FINAL MEETING | APPROVED BY | DATE AGREEMENT APPROVED

PEACETIME PRODUCTS

WARTIME PRODUCTS

A. — $_____

B. — $_____

C. — $_____

CHARACTER OF OPERATION

	NET SALES	PROFIT BEFORE TAXES ON INCOME	% OF NET SALES	NET PROFIT (INCLUDING E. P. T. CREDIT) AFTER TAXES	% NET WORTH
RENEGOTIABLE:					
FIXED PRICE BEFORE ADJUSTMENT	$	$			
AMOUNT RECOVERED			X X X		
FIXED PRICE AFTER ADJUSTMENT					
CPFF BEFORE ADJUSTMENT					
AMOUNT RECOVERED			X X X		
CPFF AFTER ADJUSTMENT					
NON-RENEGOTIABLE					
(DIS.) ALLOWANCES, NET	X X X		X X X		
OTHER (DEBITS) OR CREDITS, NET	X X X		X X X		
TOTAL BUSINESS BEFORE ADJUSTMENT				$	
TOTAL BUSINESS AFTER ADJUSTMENT					
PRIOR YEARS					
1942 RENEGOTIABLE FIXED PRICE BEFORE ADJ.				X X X	X X X
1942 RENEGOTIABLE FIXED PRICE AFTER ADJ.				X X X	X X X
1942 TOTAL AFTER RENEGOTIATION					
1941 (GOVT. BUS. ____%)					
1940 (GOVT. BUS. ____%)					
1939 (GOVT. BUS. ____%)					
1938					
1937					
1936					
1936 — 1939 AVERAGE					

TOTAL MATERIALS AND SUBCONTRACTING % OF COST OF RENEGOTIABLE SALES

MATERIALS FURNISHED BY GOVT. OR CUSTOMER FOR RENEGOTIABLE BUS. $_____

	AMOUNT	AS OF	SALARIES	NO.
CERTIFICATES OF NECESSITY	$		1943 $	(
GROSS PLANT			1942	(
NET PLANT			1941	(
NET WORKING CAPITAL			1940	(
GOVT. FACILITIES, FIXED PRICE			SPREAD SHEET	
GOVT. FACILITIES, CPFF			PREPARED BY	
GOVT. ADVANCES CPFF				
GOVT. ADVANCES, FIXED PRICE			APPROVED BY	
OTHER GOVT. FINANCING				
LONG TERM DEBT				
NET WORTH			DATE	

NET WORTH, AS OF BEG. ( ) END. ( ) 1936, $_____ 1937, $_____ 1938, $_____ 1939, $_____ 1940, $_____ 1941, $_____

PRICE REDUCTIONS, POLICIES AND COMPARISONS

EXPENSE FACTORS

COST, EFFICIENCY, PRODUCTION FACTORS

SPECIAL FACTORS

REG. SAND F. P.-C. 1

Sections 6-8
Reserved

[The next page is 791.]

Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Mr. Joseph M. Dodge, Chairman
(War Department)
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73173

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Comdr. A. G. Rydstrom
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 25, D. C.

Tel. Executive 3340
Ext. 606 or 607

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C.

Tel. Republic 7500
Ext. 71783

791.3 **Office of General Counsel.**

War Contracts Price Adjustment Board
Attention: Mr. W. James MacIntosh, General Counsel
Room 3D 630, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 72191

791.4 **Assignment Office.**

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C.

Tel. Republic 6700
Ext. 73678

791.5 **Pentagon Office.**

Room 3E 592, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73636

792. **Departmental Price Adjustment Boards.**

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Treasury Department Price Adjustment Board
Attention: Captain H. C. Maull, Jr., Chairman
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Maritime Commission Price Adjustment Board
Attention: Commander A. G. Rydstrom
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 25, D. C.

Tel. Executive 3340
Ext. 606 or 607

War Shipping Administration Price Adjustment Board
Attention: Mr. James L. Murphy, Chairman
39 Broadway
New York 6, New York

Tel. Whitehall 3-8000

Reconstruction Finance Corporation Price Adjustment Board
Attention: Mr. Charles T. Fisher, Jr., Chairman
Lafayette Building, 811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

793. War Department Price Adjustment Sections.

793.1 Headquarters.

Price Adjustment Branch
Control Office
AC/AS M. M. & D. Army Air Forces
Room 5C 964, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Exts. 72209
4420
4577

Price Adjustment Office
Materiel Command, Army Air Forces
Wright Field
Dayton, Ohio

Tel. Kenmore 7111
Exts. 22135
23292
25225

The Chief of Chemical Warfare
Attention: Major Robert M. Estes
Purchase Policies Branch
Baltimore Sub-Office, OC CWS
200 West Baltimore Street
Baltimore 1, Maryland
Tel. Lexington 0710

The Chief of Engineers
Attention: Mr. H. W. Loving
Price Adjustment Section
Room 5160, New War Department Building
Washington 25, D. C.
Tel. Republic 6700
Ext. 76225

The Chief of Ordnance
Attention: Major John M. Marble
Purchase Policy Section
Room 5D 400, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2283

The Quartermaster General
Attention: Lt. Col. H. F. Colt
Price Adjustment Section
Room 2327, Tempo. B.,
2nd and Q Streets, S. W.
Washington 25, D. C.
Tel. Republic 6700
Ext. 3744 or 6485

The Chief Signal Officer
Attention: Mr. Wilfred Goodwyn
Price Adjustment Section
Room 2C 285, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73278

The Surgeon General
Attention: Lt. Col. Lee I. Park
Renegotiation Division
Room 518, Maritime Building
1818 H Street, N .W.
Washington 25, D. C.
Tel. Republic 6700
Ext. 78455

The Chief of Transportation
Attention: Col. James F. Mitchell, Jr.
Price Adjustment Section
Room 3A 670, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 4505

War Department Power Procurement Officer
Price Adjustment Section
Room 5106, New War Dept. Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 77982

793.2 Field Offices of Price Adjustment Sections.

(1) *Army Air Forces:*

39 South La Salle Street, Chicago 3, Illinois,
Tel. Randolph 9720.

Enquirer Building, 617 Vine Street, Cincinnati, Ohio,
Tel. Cherry 8320.

4614 Prospect Avenue, Cleveland 3, Ohio,
Tel. Endicott 7200.

8505 West Warren Avenue, Detroit 32, Michigan,
Tel. Hogarth 8730.

3636 Beverly Boulevard, Los Angeles 54, California,
Tel. Drexel 7081.

67 Broad Street, New York 4, New York,
Tel. Whitehall 4-1600.

420 West Douglas Avenue, Wichita 1, Kansas,
Tel. Wichita 5-4621.

(2) *Corps of Engineers:*

50 Whitehall Street, Atlanta 2, Georgia,
Tel. Jackson 6180.

101 East Fayette Street, Baltimore 2, Maryland,
Tel. Plaza 8060.

75 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 8100.

20 North Wacker Drive, Chicago 6, Illinois
Tel. Randolph 1311.

1120 Huntington Bank Building, Columbus 16, Ohio,
Tel. Main 6481.

Santa Fe Building, 1114 Commerce Street,
Dallas 2, Texas,
Tel. LD 930.

270 Broadway, New York 7, New York,
Tel. Barclay 7-1616.

Farm Credit Building, 19th and Douglas,
Omaha 1, Nebraska,
Tel. Webster 5966.

351 California Street, San Francisco, California,
Tel. Garfield 6900.

(3) *Ordnance Department:*

700 Frank Nelson Building, Birmingham 1, Alabama,
Tel. Birmingham 4-7511.

140 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 9800.

38 South Dearborn Street, Chicago 3, Illinois,
Tel. Franklin 4900.

Big Four Building, Cincinnati 1, Ohio,
Tel. Cherry 3800.

1006 Terminal Tower Building, Cleveland 13, Ohio,
Tel. Main 0670.

1832 National Bank Building, Detroit 32, Michigan,
Tel. Randolph 9360.

Room 1815—80 Broadway, New York 5, New York,
Tel. Hanover 2-7300.

150 South Broad Street, Philadelphia 2, Pennsylvania,
Tel. Locust 4020.

1202 Chamber of Commerce Building, Pittsburgh 9, Pennsylvania,
Tel. Grant 5966.

1238 Mercantile Building, Rochester 4, New York.
Tel. Stone 3203.

3663 Lindell Boulevard, St. Louis 8, Missouri,
Tel. Jefferson 7380.

100 McAllister Street, San Francisco 1, California.
Tel. Underhill 3306.

95 State Street, Springfield 3, Massachusetts.
Tel. 7-0211

(4) *The Quartermaster General:*

1 State Street, Boston 9, Massachusetts,
Tel. Lafayette 3712.

333 North Michigan Avenue, Chicago 1, Illinois,
Tel. Franklin 5910.

521 Fifth Avenue, New York 17, New York,
Tel. Murray Hill 2-2622.

520 Kohl Building, Montgomery and California Streets, San Francisco 4, California,
Tel. Exbrook 7467.

16th Floor Woodside Building, Greenville, South Carolina,
Tel. 7140.

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 6, D. C.
Tel. Republic 7400.
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
21st Floor
100 West Monroe Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61468.

(2) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(3) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 5-3851.

(4) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 916, 610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 2900.
Ext. 372-3.

(5) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Trinity 1432.

794.3 Price Revision Division.

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. Related Offices.

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. War Department Patent Royalty Adjustment Offices.

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Chief, Legal Division
Office of the Chief of Transportation
Room 3A 724, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3556

Chief, Contracts and Claims Branch
Office of the Chief of Engineers
Room 3213, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 78253

Chief, Patent Section, Legal Branch
Office of the Chief of Ordnance
Room 4E 330, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2748

Patents and Inventions Counsel, Legal Division
Office of the Chief Signal Officer
Room 4D 331, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3702

Chief, Patent Section, Legal Branch
Office of the Chief of the Chemical Warfare Service
Room 1007, T-7
Gravelly Point
Virginia

Tel. Republic 6700
Ext. 2826

Chief, Patent Section, Legal Branch
Office of the Quartermaster General
Room 2442, Tempo B
Washington 25, D. C.

Tel. Republic 6700
Ext. 4294

The Patent Representative
Office of the Surgeon General
Room 419, Maritime Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79369

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by any subcontractor on account of amounts withheld from such subcontractor pursuant to this paragraph. All money recovered in respect of amounts paid to the contractor from appropriations from the Treasury by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.[*] In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code. For the purposes of this paragraph the term "contractor" includes a subcontractor.

(3) No proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statement required under paragraph (5) is filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statement is so filed, whichever is the later, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4), such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement.

(4) For the purposes of this section the Board may make final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (A) such agreement shall not for the purposes of this section be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (B) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding.

(5) (A) Every contractor and subcontractor who holds contracts or subcontracts, to which the provisions of this subsection are

[* See paragraph 801.14.]

applicable, shall, in such form and detail as the Board may by regulations prescribe, file with the Board on or before the first day of the fourth month following the close of the fiscal year (or if such fiscal year has closed on the date of the enactment of the Revenue Act of 1943, on or before the first day of the fourth month following the month in which such date of enactment falls), a financial statement setting forth such information as the Board may by regulations prescribe as necessary to carry out this section. In addition to the statement required under the preceding sentence, every such contractor or subcontractor shall, at such time or times and in such form and detail as the Board may by regulations prescribe, furnish the Board any information, records, or data which is determined by the Board to be necessary to carry out this section. Any person who willfully fails or refuses to furnish any statement, information, records, or data required of them under this subsection, or who knowingly furnishes any such statement, information, records, or data containing information which is false or misleading in any material respect, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or imprisonment for not more than two years, or both.

(B) For the purposes of this section the Board shall have the same powers with respect to any such contractor or subcontractor that any agency designated by the President to exercise the powers conferred by Title XIII of the Second War Powers Act, 1942, has with respect to any contractor to whom such title is applicable. In the interest of economy and the avoidance of duplication of inspection and audit, the services of the Bureau of Internal Revenue shall, upon request of the Board and the approval of the Secretary of the Treasury, be made available to the extent determined by the Secretary of the Treasury for the purpose of making examinations and audits under this section.

(6) This subsection shall be applicable to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943, and whether or not such contracts or subcontracts contain the provisions required under subsection (b), unless (A) the contract or subcontract provides otherwise pursuant to subsection (i), or is exempted under subsection (i), or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph.

801.4 **Sec. 403 (d).** (1) There is hereby created a War Contracts Price Adjustment Board (in this section called the "Board"), which shall consist of six members. One of the members shall be an officer or employee of the Department of War and shall be

product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state. Notwithstanding any other provisions of this section there shall be excluded from consideration in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory. For the purposes of this paragraph the term "excess inventory" means inventory of products, hereinbefore described in this paragraph, acquired by the contractor or subcontractor in the form or at the state in which contracts for such products on hand or on contract would be exempted from this section by subsection (i) (1) (B) or (C), which is in excess of the inventory reasonably necessary to fulfill existing contracts or orders. That portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board. In the case of a renegotiation with respect to a fiscal year ending prior to July 1, 1943, the portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory shall (to the extent such portion does not exceed the excessive profits determined) be credited or refunded to the contractor or subcontractor, and in case the determination of excessive profits was made prior to the date of the enactment of the Revenue Act of 1943, such credit or refund shall be made notwithstanding such determination is embodied in an agreement with the contractor or subcontractor, but in either case such credit or refund shall be made only if the contractor or subcontractor, within ninety days after the date of the enactment of the Revenue Act of 1943, files a claim therefor with the Secretary concerned.

(4) The Board is authorized, in its discretion, to exempt from some or all of the provisions of this section—

(A) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska;

(B) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;

(C) any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits;

(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;

(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price; and

(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation.

The Board may so exempt contracts and subcontracts both individually and by general classes or types.

801.10 Sec. 403 (j). Nothing in sections 109 and 113 of the Criminal Code (U. S. C., title 18, secs. 198 and 203) or in section 190 of the Revised Statutes (U. S. C., title 5, sec. 99) shall be deemed to prevent any person by reason of service in a Department or the Board during the period (or a part thereof) beginning May 27, 1940, and ending six months after the termination of hostilities in the present war, as proclaimed by the President, from acting as counsel, agent, or attorney for prosecuting any claim against the United States: *Provided*, That such person shall not prosecute any claim against the United States (1) involving any subject matter directly connected with which such person was so employed, or (2) during the period such person is engaged in employment in a Department.

801.11 Sec. 403 (k). Nothing in this section shall be construed to limit or restrict any authority or discretion of the Secretary of a Department under the provisions of any other law.

801.12 Sec. 403 (l). This section may be cited as the "Renegotiation Act."

801.13 Effective Date of Section 403. Section 701 (d) of the Revenue Act of 1943 provides:

> "The amendments made by subsection (b) shall be effective only with respect to the fiscal years ending after June 30, 1943, except that (1) the amendments inserting subsections (a) (4) (C), (a) (4) (D), (i) (1) (C), (i) (1) (D), (i) (1) (F), (i) (3), and (1) in section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, shall be effective as if such amendments and subsections had been a part of section 403 of such Act on the date of its enactment, and (2) the amendments adding subsection (d) and (e) (2) to section 403 of such Act shall be effective from the date of the enactment of this Act."

801.14 Military Appropriation Act, 1945. Section 23 of the Military Appropriation Act, 1945, states as follows:

"The application to the requirements of the War Department by the reappropriation of unexpended balances of prior years shall be deemed to be a compliance with so much of paragraph (2) of subsection (c) of section 403, as amended, of the Sixth Supplemental National Defense Appropriation Act, 1942, as reads: 'Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury.'"

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(B) In the case of a renegotiation with respect to the taxable year 1942 which is made after the enactment of the Current Tax Payment Act of 1943 and prior to the date on which the individual files his return for the taxable year 1943 and with respect to which payment or repayment of the excessive profits eliminated or any part thereof is deferred by agreement, if the amount shown as the tax on the return for the taxable year 1943 reflects the application of paragraph (1) of subsection (a) with respect to the taxable year 1942 and is computed in accordance with the provisions of section 6 of the Current Tax Payment Act of 1943, there shall be credited against the excessive profits eliminated for the taxable year 1942 the amount by which the sum of the estimated tax previously paid for the taxable year 1943 and the payments on account of the taxable year 1942 which are treated as payments on account of the estimated tax for the taxable year 1943, exceeds the amount shown as the tax on the return for the taxable year 1943: Provided, That the amount allowable as a credit under the foregoing provisions of this subparagraph shall not exceed (i) the amount of credit of overpayment of tax provided for in the agreement deferring payment or repayment of excessive profits eliminated or (ii) the amount of excessive profits eliminated for the taxable year 1942 which, at the time the credit is allowed, have not been paid or repaid to the United States or an agency thereof or applied as an offset against other amounts due the individual. If any credit is allowed under this subparagraph, no other credit or refund under the internal revenue laws shall be made on account of the amount so allowed with respect to the taxable year 1943. Any credit of overpayment of tax allowed pursuant to the agreement deferring payment or repayment of excessive profits eliminated shall be considered as a credit allowed under this subparagraph.

(C) Except as prevented by the provisions of the foregoing subparagraph (B), there shall be credited against the amount of excessive profits eliminated for the taxable year 1942 the amount by which the tax for the taxable year 1943 as computed under section 6 of the Current Tax Payment Act of 1943 is decreased by reason of the application of paragraph (1) of subsection (a) with respect to the taxable year 1942; and there shall be credited against the amount disallowed for the taxable year 1942 the amount by which the tax for the taxable year 1943 as computed under section 6 of the Current Tax Payment Act of 1943 is decreased by reason of the application of paragraph (2) of subsection (a) with respect to the taxable year 1942.

For the purposes of the foregoing provisions of this paragraph, the terms "taxable year 1942" and "taxable year 1943" shall have the meanings assigned to them by section 6 (g) of the Current Tax Payment Act of 1943.

(3) *Credit for Barred Year.*—If at the time of the payment, repayment, or offset described in paragraph (1) or paragraph (2) of subsection (a), refund or credit of tax under Chapter 1, Chapter 2A, Chapter 2B, Chapter 2D, or Chapter 2E, for the prior taxable year, is prevented (except for the provisions of Section 3801) by any provision of the

internal-revenue laws other than Section 3761, or by rule of law, the amount by which the tax for such year under such chapters is decreased by the application of paragraph (1) or paragraph (2) of subsection (a) shall be computed under this paragraph. There shall first be ascertained the tax previously determined for the prior taxable year. [*] The amount of the tax previously determined shall be the excess of—(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return (determined as provided in section 271 (b) (1) and (3)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—(2) the amount of rebates, as defined in section 271 (b) (2), made. There shall then be ascertained the decrease in tax previously determined which results solely from the application of paragraph (1) or paragraph (2) of subsection (a) to the prior taxable year. The amount so ascertained, together with any amounts collected as additions to the tax or interest, as a result of paragraph (1) or paragraph (2) of subsection (a) not having been applied to the prior taxable year shall be the amount by which such tax is decreased.

(4) *Interest.*—In determining the amount of the credit under this subsection no interest shall be allowed with respect to the amount ascertained under paragraph (1) or paragraph (2); except that if interest is charged by the United States or the agency thereof on account of the disallowance for any period before the date of the payment, repayment, or offset, the credit shall be increased by an amount equal to interest on the amount ascertained under either such paragraph at the same rate and for the period (prior to the date of the payment, repayment, or offset) as interest is so charged.

802.3 Section 3806 (c). *Credit in Lieu of Other Credit or Refund.*—If a credit is allowed under subsection (b) with respect to a prior taxable year no other credit or refund under the internal-revenue laws founded on the application of subsection (a) shall be made on account of the amount allowed with respect to such taxable year. If

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[* The third sentence of section 3806 (b) (3) was amended to read as shown in the text by the Individual Income Tax Act of 1944, sec. 14 (b). The Individual Income Tax Act of 1944, sec. 14 (e) provides as follows:

> "The amendment made by subsection (b) to section 3806 (b) (3) of such Code shall, for the purposes of such section, be applicable in the determination of a tax previously determined only if such tax is for a taxable year beginning after December 31, 1942."

Prior to such amendment by the Individual Income Tax Act of 1944, sec. 14, the third sentence of IRC, section 3806 (b) (3) read as follows:

> "The amount of the tax previously determined shall be (A) the tax shown by the taxpayer upon his return for such taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (B) if no amount was shown as the tax by such taxpayer upon his return, or if no return was made by such taxpayer, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax".

The Individual Income Tax Act of 1944 is Public Law 315—78th Congress, Chapter 210—2nd Session.]

the amount allowable as a credit under subsection (b) exceeds the amount allowed under such subsection, the excess shall, for the purposes of the internal-revenue laws relating to credit or refund of tax, be treated as an overpayment for the prior taxable year which was made at the time the payment, repayment, or offset was made.

803. Title XIII of Second War Powers Act, 1942.

803.1 Statutory Provision.

Second War Powers Act, 1942
Act of March 27, 1942, P. L. 507

Title XIII

Sec. 1301. The provisions of section 10 (1) of an Act approved July 2, 1926 (44 Stat. 787; 10 U. S. C. 310 (1)) (giving the Government the right to inspect the plant and audit the books of certain

[The next page is 829.]

Section 4

EXEMPTIONS

841. **Raw Material Exemption.** Pursuant to subsection (i) (2) of the 1943 Act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (i) (1) (B) of the 1943 Act.

(1) The term "exempted products", as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.

Alumina; aluminum sulfate; aluminum ingots and pigs.

Asphalt, natural.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide; antimony sulfide.

Arsenic, crude; arsenic powder; arsenious oxide (white arsenic).

Asbestos rock; asbestos fibre.

Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.

Beryl ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.

Bismuth metal.

Borax.

Cadmium flue dust; cadmium oxide; cadmium balls and slabs.

China clay; kaolin; fire clay; brick and tile made from clays other than kaolin, china and fire clay.

Chlorine and hydrogen produced directly by electrolysis of salt brine.

Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.

Coal, prepared; run-of-mine coal.

Cobalt oxide; cobalt anodes, shot and rondelles.

Columbium ore and concentrates; columbium oxide; ferrocolumbium.

Copper ore, crude; copper ore, concentrated; copper matte; blister copper; copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.

Corundum ore and concentrates; corundum grain.

Cryolite ore and concentrates.

Diaspore; diaspore brick.

Diatomaceous silica, lump, block, brick and powder.

Feldspar, crude and ground.

Ferrosilicon.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Fuller's earth.

Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.

Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.

Gypsum, crude; calcined gypsum.

Indium metal.

Industrial diamonds.

Iridium metal, including ingot and powder.

Iron ore, crude; pig iron.

Kyanite ore and concentrates; kyanite brick.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Limestone; crushed limestone.

Magnesite; dead burned magnesite.

Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.

Mercury ore; mercury metal.

Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.

Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.

Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.

Monel ore; monel matte; monel ingots, pigs, and shot, produced from monel matte.

Natural gasoline; casinghead gasoline; residue gas.

Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Osmium metal, including ingot and powder.

Palladium metal, including ingot and powder.

Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.

Platinum ore and concentrates; platinum metal, including ingot and powder.

Pumice, lump.

Radium bromide; radium sulfate; radium gas.

Rhodium metal, including ingot and powder.

Ruthenium metal, including ingot and powder.

Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.

Sea shells; oyster shells; clam and reef shells.

Selenium metal.

Silver, refined, including bars, shot, powder and grains.

Sodium aluminate.

Stone, rough dimension.

Sulfur, crude.

Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).

Standing timber, logs, logs sawed into length, and logs with or without bark.

Talc, crude, ground and sawed.

Tantalum ore and concentrates; tantalum double fluoride.

Tellurium metal.

Tin ore and concentrates; refined pig tin.

Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide; ferrotitanium.

Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide.

Uranium ores and concentrates; uranium oxide.

Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.

Whiting; chalk lump.

Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.

Zirconium ores and concentrates.

(2) Subject to the provisions of paragraph 3 hereof, it is determined that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use" within subsection (i) (1) (B) of the

(1) Contracts and subcontracts with common carriers to furnish transportation by railroad, motor vehicle, pipe line or air, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

(2) Contracts and subcontracts with common carriers to furnish inland or coastal transportation by water, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

(3) Contracts and subcontracts with freight forwarders when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission.

842.4 **Public Utilities—Communications.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with telephone, telegraph, cable and radio companies to furnish the service of transmitting messages, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for service of a comparable character.

842.5 **Subcontracts.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Subcontracts under any contracts or subcontracts exempted pursuant to paragraphs 842.1 through 842.4 inclusive.

842.6 **Scope of Exemptions.** All of the exemptions made under paragraphs 842.1 through 842.5 inclusive, apply to contracts and subcontracts of the specified classes and types, whether heretofore or hereafter made or performed, and whether or not they contain renegotiation provisions.

843. List of Exempted Foods.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and sub-

contracts for perishable foods under Section 403 (i) (4) (B) of the Renegotiation Act of 1943.

Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (4) (B) of the Renegotiation Act of 1943, concerning the exemption of contracts and subcontracts for certain perishable goods from renegotiation under the Renegotiation Act of 1943, the War Contracts Price Adjustment Board hereby determines that the foods set forth in the list attached hereto and designated as Exhibit "1" are perishable; and that, in the opinion of the Board, the profits under contracts and subcontracts for the purchase of such foods can be determined with reasonable certainty when the contract price is established; and that contracts and subcontracts, heretofore or hereafter made, for the purchase of such foods are hereby declared to be exempt from all of the provisions of the Renegotiation Act of 1943.

EXHIBIT 1

Fresh Fruits:
- Apples
- Apricots
- Bananas
- Berries (blue and black)
- Cantaloupes
- Cherries
- Cranberries
- Grapes
- Grapefruit
- Honeydew Melons
- Lemons
- Limes
- Oranges
- Pears
- Peaches
- Plums
- Strawberries
- Tangerines
- Watermelons
- Other Miscellaneous Fresh Fruits

Fresh Vegetables:
- Asparagus
- Beans, Lima
- Beans, String
- Beets
- Broccoli
- Cauliflower
- Corn
- Cucumbers
- Egg Plant
- Endive (chicory)
- Greens (collards, etc.)
- Kale
- Lettuce
- Onions, Green
- Onions, Dry
- Parsley
- Parsnips
- Peas
- Peppers, Green
- Potatoes, Irish
- Potatoes, Sweet
- Radishes
- Spinach

Fresh Vegetables—continued
- Squash
- Tomatoes
- Turnips and Rutabagas
- Mushrooms
- Rhubarb
- Other Miscellaneous Fresh Vegetables

Dairy Products:
- Butter (except canned)
- Cheese (except processed canned)
- Ice Cream; ice cream mix in unsealed containers
- Fresh Fluid Milk
- Fresh Fluid Cream

Poultry:
- Chicken (except canned)
- Turkey (except canned)
- Other Poultry (except canned)

Meats:
- Beef (except canned and dehydrated)
- Pork (except canned and dehydrated)
- Lamb and Mutton (except canned and dehydrated)
- Veal (except canned and dehydrated)
- Smoked or Processed Meats (except canned and dehydrated)
- Other Meats (except canned and dehydrated)
- Lard and Lard Substitutes
- Offals (except canned and dehydrated)

Fish and Sea Foods:
- Fresh or Frozen
- Salted or Smoked (except canned)

Frozen Vegetables

Frozen Fruits

Bread and other Bakery Products (except biscuits, crackers, cracker meal, breakfast cereals, hard bread and zwieback)

Potato Chips

Compressed Yeast

Shell Eggs

Margarine

Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap sold by dealers or brokers;

[**Comment**: The exemption of iron scrap and steel scrap as a standard commercial article applies only to dealers and brokers in iron scrap and steel scrap and is not to be construed as affecting, in any way, users of iron scrap or steel scrap, in particular, manufacturers of iron or steel or processors making iron or steel products who may produce and sell iron scrap or steel scrap as a by-product in the course of their operation. Neither does the exemption cover dealers in secondhand iron and steel machinery, equipment or facilities which are sold for re-use in any way other than as scrap.]

(b) Refined sugar (cane or beet);

(c) Textile bags (made of burlap or cotton);

(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.

bursed under a cost-plus-a-fixed-fee contract (see section 3806 (a) 2 of the Code), and (2) contracts involving any renegotiation within the meaning of that term as it is defined in section 3806 (a) 1 (A) of the Code, including, but not limited to, (*a*) any modification of one or more contracts with the United States or any agency thereof when such modification effects a voluntary elimination of excessive profits (as defined in section 3806 (a) 1 (B) of the Code) for a prior year, or a price reduction made retroactive for a prior year pursuant to express provision for price adjustment contained in the contract, and (*b*) any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

852.4 I. T. 3671.

Section 3806—Mitigation of Effect of Renegotiation of War Contracts or Disallowance of Reimbursement

1944-12-11764
I. T. 3671

INTERNAL REVENUE CODE

The term "renegotiation," for the purposes of section 3806 of the Internal Revenue Code, as amended, is not limited to a renegotiation within the meaning of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (56 Stat., 226), as amended.

Advice is requested whether the term "renegotiation," for the purposes of section 3806 of the Internal Revenue Code, as amended, is limited to a renegotiation within the meaning of section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 (56 Stat., 226), as amended, or whether any Government contractor, acting upon his own initiative and desirous of refunding direct to the United States profits he has realized under a Government contract, or a subcontract thereunder, may effect a repayment of such profits in a manner coming within the provisions of section 3806 of the Code, as amended.

Section 3806 (a) (1) (A) of the Code provides as follows:

The term "renegotiation" includes any transaction which is a renegotiation within the meaning of section 403 of the Sixth Supplemental National Defense Appropriation Act (Public 528, 77th Cong., 2d Sess.) or such section, as amended, any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder.

It will be noted that the above-quoted provision of the Code includes within the term "renegotiation"—"any modification of one or more contracts with the United States or any agency thereof, and any agreement with the United States or any agency thereof in respect of one or more such contracts or subcontracts thereunder."

It is held that the term "renegotiation," for the purposes of section 3806 of the Internal Revenue Code, as amended, is not limited to a renegotiation within the meaning of section 403 of the Sixth

Supplemental National Defense Appropriation Act, 1942, as amended, supra (which section is cited as the Renegotiation Act). It includes an agreement in writing made in respect of one or more Government contracts or subcontracts thereunder, and may be effected by an exchange of correspondence which embodies a binding agreement by both parties as to the amount repaid or to be repaid and the year to which the repayment relates. A Government contractor, acting upon his own initiative and desirous of refunding direct to the United States profits he has realized under a Government contract, or a subcontract thereunder, should, however, get in touch with the renegotiating agency as to the form of agreement in writing which may be employed.

[The next page is 1001.]

SUPPLEMENT RR-3

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS
for fiscal years ending after June 30, 1943

4 August 1944

SUMMARY OF IMPORTANT AMENDMENTS

1. Construction Contracts Awarded as a Result of Competitive Bidding. Revision of paragraph 346.2 relating to interpretation and application of mandatory exemption.

2. Subcontracts under Contracts and Subcontracts Mandatorily Exempted. Revision of paragraph 347.2 relating to the interpretation and application of the exemption of subcontracts under contracts and subcontracts mandatorily exempted.

3. No Reduction by Refund Below Exemption. Revision of "floor" provisions of paragraph 348.3 to require application after adjustment for state income taxes and specifying method of application in cases of "common control".

4. Permissive Exemption of Construction Contracts and Subcontracts When Effective Competition Is Likely to Exist. Revision of paragraph 355.3 relating to the application of the permissive exemption to construction contracts and subcontracts.

5. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits. Revision of paragraph 356.2 relating to the application of this permissive exemption.

6. Waiver of Claims under CPFF Contracts. Addition of provisions relating to claims under CPFF contracts when the amounts of the items disallowed under such contracts are allowed as costs against renegotiable business (see paragraphs 407.3 (1), 506.6 and 741.2 (7)).

7. Consolidated Renegotiation. Addition of form and instructions for use in case of consolidated renegotiation (see paragraphs 502.13 and 741.2 (2)).

8. Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation. See forms added at paragraph 724.

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

28-440810

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FILING INSTRUCTIONS

The pages sent with this memorandum are to be included *immediately* in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
201—202	201—202	Change in Table of Contents for Chapter II.
223—224	223—224	(1) Revision of paragraph 223.1 relating to use of forms appearing in paragraphs 702.1 and 702.3. (2) Addition of paragraph 223.3 relating to use of form appearing in paragraph 702.4. (3) Revision of paragraph 224 to reflect addition of form for Construction Contractors, Architects and Engineers Information and Work Sheet for Renegotiation at paragraph 724.
241	241	(1) Revision of paragraph 241 relating to commencement of renegotiation to require the giving of formal notice prior to holding a conference to discuss the amount of the refund. (2) Revision of paragraph 242 to reflect addition of form for Construction Contractors, Architects and Engineers Information and Work Sheet for Renegotiation at paragraph 724.
303—304	303—304	Changes in Table of Contents for Chapter III.
315—316	315—316	(1) Addition of reference at end of paragraph 311 (2). (2) Revision of paragraph 311 (3) relating to the form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation.
347B—348	347B—348	(1) Revision of paragraph 346.2 relating to interpretation and application of exemption of construction contracts awarded as a result of competitive bidding. (2) Revision of paragraph 347.2 relating to the interpretation and application of exemption to subcontracts under exempt contracts and subcontracts. (3) Addition to paragraph 348.2 (2) of provision that in computation of aggregate receipts and accruals within the statutory minimum, the same will be computed without the elimination of inter-company sales. (4) Revision of paragraph 348.3 relating to reduction of refund below exemption.
353—355	353—356	(1) Revision of paragraph 355.3 relating to application of exemption to construction contracts and subcontracts when effective competition is likely to exist. (2) Revision of paragraph 356.2 relating to exemption of subcontracts as to which it is not administratively feasible to determine and segregate profits. (3) The word "quintuplicate" in paragraph 358 is changed to "triplicate".
361—362	361—362	Addition of references in paragraphs 362 and 363.
383B—384	383B—384	Addition to paragraph 381.4 of subdivision (5) relating to costs previously allowed in renegotiation.
385—386	385—386	Revision of paragraph 382.6 (2) (c) relating to pension, annuity, stock bonus and profit sharing plans.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
387D—387E	387D—387E	Addition of reference at end of paragraph 389.1.
415—416	415—416	Addition of reference at end of paragraph 407.3 (1)
501—502	501—502	Changes in Table of Contents for Chapter V.
511—518	511—517B	(1) Addition to paragraph 502.2, relating to Article 1 of Standard Form of Agreement, of requirement of statement as to application of "floor" provisions of paragraph 348.3. (2) Addition of subdivision (8) to paragraph 502.5 containing a reference to the provisions for the payment of interest in case of default. (3) Revision of paragraph 502.12 (2) relating to the form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation. (4) Addition of new subdivision (5) to paragraph 502.12 of provision requiring that the renegotiation agreement must be accompanied or supported by proper evidence of authority where the authority of the person signing the agreement is based upon a written instrument or court order or provision of law. (5) Addition of paragraph 502.13 relating to the form and execution of agreements in cases of consolidated renegotiation. (6) Addition of new paragraph 506.6 relating to waivers of claims under Cost-Plus-Fixed-Fee Contracts.
701—703	701—703	Changes in Table of Contents for Chapter VII.
727—728	727—728	(1) Addition of footnote to form appearing at paragraph 702.2. (2) Change in title of form appearing at paragraph 702.3.
731—732	731—732	Changes the word "and" to "or" in fourth line from bottom of page 731 and changes the word "or" to "and" in third line from bottom of page 731.
759B—760	759B—759N	Addition in paragraph 724 of form for Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.
765—766 (6 pages)	765—766 (8 pages)	(1) Addition of footnote to Article 1 in Standard Form of Agreement (paragraph 741.1) requiring addition of statement in cases where amount of refund has been limited by the "floor" provisions of paragraph 348.3. (2) Revision of paragraph 741.2 (2) relating to variations in Article 2 of the Standard Form of Agreement when the renegotiation covers a parent and subsidiaries. (3) Addition to paragraph 741.2 of a new subdivision (7) containing a clause relating to the waiver of CPFF claims and instructions for its use. (4) Addition of reference to paragraph 741.2 (7) at end of paragraph 741.3.
791—792	791—792	Change in postal zone for address in paragraph 791.1.
795—797	795—797D	(1) Change in address for War Department Power Procurement Officer (paragraph 793.1) and changes in telephone numbers of the Services and Sales Renegotiation Sections of the Navy Department (paragraphs 794.2 (4), (5)). (2) Addition of paragraph 797 containing addresses of RFC Price Adjustment Sections.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(3) Addition of paragraph 798 containing addresses of War Department Power Procurement Officer Price Adjustment Sections.
801—802	801—802	Change in Table of Contents for Chapter VIII.
839	839	Addition of paragraph 807 containing the statute bearing on the legal rate of interest in the absence of agreement in the District of Columbia.
849—850	849—850	Addition of vegetable seeds to the exemption list of agricultural commodities in paragraph 844.

★When you have filed these pages, place this instruction letter at the back of your binder.

CHAPTER II

PROCEDURE FOR RENEGOTIATION

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on or before the date specified in the 1943 Act, such contractor may file such report containing such information as he can feasibly supply, which in all cases shall include at least the contractor's balance sheet, profit and loss statement and surplus statement for his latest completed fiscal year and shall state in such report that the information not contained therein or such other information as the Department or such Branch may require, will be furnished within such period as the Department or such Branch may designate. In any such case the filing of such a statement on or before the date specified in the Act and its acceptance by such Department or such Branch shall constitute compliance by the contractor with the provisions of subsection (c) (5) (A).

222.2 **Time for Filing.** The mandatory financial statements hereby prescribed shall be filed on or before the first day of the fourth month following the close of the fiscal year of the contractor (or if such fiscal year had been closed on February 25, 1944, on or before the first day of June, 1944), whether or not any demand has been made by the War Contracts Board or by any person on its behalf.

222.3 **Place for Filing.** Except as stated herein, the mandatory financial statements hereby prescribed shall be filed in duplicate with the War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C. Where the contractor has received a "Letter of Preliminary Inquiry" (see paragraph 223) and a "Standard Form of Contractor's Report" from a renegotiating Agency, the mandatory financial statements hereby prescribed shall be filed in duplicate with that Agency. The renegotiating Agency will forward one copy to the War Contracts Board within sixty days after receipt of the Report by the Renegotiating Agency.

222.4 **Availability of Forms.** Copies of the forms above mentioned may be obtained upon request to the Assignments and Statistics Branch or to any of the Price Adjustment Boards or Sections of the several Departments authorized to conduct renegotiation proceedings.

222.5 **Effect of Filing Mandatory Financial Statements.** The filing of a mandatory financial statement in accordance with the provisions of this paragraph 222 will not relieve any contractor or subcontractor of the duty to furnish such other information, records or data which are determined by the War Contracts Board or its representatives to be necessary to carry out its responsibilities under the Act.

222.6 **Filing of Mandatory Financial Statements by Parent and Subsidiary Corporations on a Consolidated Basis.** Parent and subsidiary corporations which constitute an "affiliated group" as defined in subsection (d) of Section 141 of the Internal Revenue Code may satisfy the requirements for filing of mandatory financial statements under the first sentence of subsection (c) (5) (A) of the Renegotiation Act of 1943 by filing a "Standard Form of Contractor's Report" on a consolidated basis. When such a consolidated "Standard Form of Contractor's Report" is filed there shall also be filed a "Standard Form of Contractor's Report" for each subsidiary corporation (except as noted below) but any such subsidiary corporation report may be completed by writing thereon a statement that a consolidated report has

been filed by the parent company. Where any such subsidiary corporation has not received or accrued during the applicable period any amount whatever under renegotiable contracts with the Departments and subcontracts (i. e., contracts or subcontracts not exempt from renegotiation by contractual provision pursuant to subsection (i) or contracts or subcontracts which are not exempted under subsection (i) of the Renegotiation Act of 1943), no report need be filed by it.

223. Letter of Preliminary Inquiry.

223.1 Unassigned Contractors. The War Contracts Board, through the Assignments and Statistics Branch, may send to contractors and subcontractors who are identified by it as probably subject to renegotiation proceedings (except those who have been previously assigned) a "Letter of Preliminary Inquiry" (see paragraphs 702.1 and 702.3). Since the form appearing at paragraph 702.1 allows a period of thirty days for answering, it will not be used within 30 days of the time for filing prescribed by the 1943 Act. The "Letter of Preliminary Inquiry," sent by the Assignments and Statistics Branch, will be to determine whether or not the contractor should be assigned for renegotiation and to what Department or Service, if any, such assignment should be made. The filing of the "Standard Form of Contractor's Report" will constitute compliance with the requirement for mandatory filing under paragraph 222, if filed within the time prescribed by the 1943 Act.

223.2 Assigned Contractors. The Departments and Services may send to contractors who have been assigned to them for 1943 renegotiation the "Letter of Preliminary Inquiry" (see paragraph 702.2) and the appropriate Standard Form of Contractor's Report. In such cases, the filing of the Standard Form of Contractor's Report will constitute compliance with the requirements of mandatory filing under paragraph 222 if filed within the time prescribed by the 1943 Act, and, with respect to assigned cases, will enable a determination to be made as to whether further renegotiation proceedings will be necessary.

223.3 Follow-up. The form appearing at paragraph 702.4 will be used with respect to contractors who have not made response to a "Letter of Preliminary Inquiry" within the time prescribed for filing under subsection (c)(5)(A) of the 1943 Act. Such follow-up letters will be sent by the office which sent the "Letter of Preliminary Inquiry" with appropriate variation in signature.

224. Contractor's Information and Work Sheet for Renegotiation. The War Contracts Board, through the Department or Service to which any contractor or subcontractor is assigned, may send to such contractor or subcontractor a form designed to assist him in preparing information when it is contemplated that formal renegotiation proceedings will be carried to conclusion (see paragraph 242). The form prepared for the use of supply contractors is the "Contractor's Information and Work Sheet for Renegotiation" (see paragraph 722) and that for construction contractors, architects and engineers is the "Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation" (see paragraph 724).

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Section 4

CONDUCT OF RENEGOTIATION

240. Scope of Section. This section includes instructions on the conduct of renegotiation.

241. Commencement of Renegotiation. Renegotiation proceedings are commenced by the mailing, by registered mail, of reasonable notice of the time and place of a conference to be held with respect to the renegotiation. (See paragraph 801.3.) A form which may be used for such purpose is set forth in paragraph 721. Such notice shall be given in all cases of renegotiations with respect to fiscal years ending after June 30, 1943, and in the absence of unusual circumstances such notice shall be given prior to the time a conference is held for the purpose of discussing the refund. In any case where a conference is unnecessary by reason of the progress which has been made in renegotiation prior to the sending out of the formal notice, the notice should be sent, but the conference can be waived by agreement with the contractor.

242. Data Presented by Contractor. The contractor should be prepared to present all the factual data pertinent to the consideration of his case. In this connection, reference is made to the information required in the mandatory financial statement (paragraph 220 and following) and to other chapters hereof. Suitable forms, designed to help contractors in assembling data of significance in renegotiation, are set out at paragraphs 722 and 724. These forms are not mandatory, but indicate the type of information required of a contractor to supplement what he supplied on the mandatory financial statement (see paragraph 701). Manufacturers and supply contractors should use the "Contractor's Information and Work Sheet for Renegotiation" (see paragraph 722), and construction contractors, architects and engineers should use the "Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation" (see paragraph 724). (See also paragraph 224.)

243. Process of Renegotiation. The general principles applicable to the conduct of renegotiation and the process of arriving at a renegotiation determination are discussed in paragraph 402.3.

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from performance of the single undertaking may be allocated equally to each vessel. Such contracts are subject to renegotiation unless otherwise exempt, but their provisions necessitate special treatment with respect to which the Department with which the contracts are made should be consulted.

308. Treatment of Other Contract Claims. If a contractor has claims other than of the kind discussed in paragraphs 306 and 307 which may affect his profits from renegotiable business for the period under review, such claims should be revealed in the financial or other data upon which the renegotiation is based.

309. Renegotiation of Parent and Subsidiaries on Consolidated Basis.

309.1 When Authorized. Renegotiation of parent and subsidiary companies may, in the discretion of the Department conducting the renegotiation, be conducted on a consolidated basis whether or not the parent and subsidiaries constitute an "affiliated group" as defined in subsection (d) of Section 141 of the Internal Revenue Code.

309.2 Definition of "Affiliated Group". Section 141 (d) of the Internal Revenue Code is as follows:

> "(d) Definition of 'Affiliated Group'. As used in this section, an 'affiliated group' means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—
>
> "(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and
>
> "(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.
>
> As used in this subsection, the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends."

310. Consolidated Basis in Cases of Common Ownership.

310.1 When Authorized. If two or more business enterprises are under common control as a result of common ownership, rather than as a result of parent-subsidiary relationship, renegotiation on a consolidated basis may be appropriate if

(a) such consolidation is reasonably necessary for the protection of the interests of the Government. This is especially likely if one or more of such enterprises is a subcontractor of another of the enterprises commonly owned; and

(b) the extent of the common ownership is such that consolidation for renegotiation purposes is not, in the opinion of the Department conducting the renegotiation, inequitable to minority interests in one or more of the enterprises.

It is not essential that the interests of the common owners be identical in extent or nature in each of the enterprises commonly owned.

311. Allocation of Excessive Profits in Cases of Consolidated Renegotiation.

(1) In renegotiation on a consolidated basis, careful scrutiny will be given to the methods employed in segregating costs as well as income as between the corporations or enterprises included in the consolidated renegotiation, particularly where the type of business conducted by one is different and distinct from the type of business conducted by the others in the consolidated group.

(2) Excessive profits must be allocated among the corporations or enterprises included in the renegotiation, and the renegotiation agreement must disclose the allocation. If excessive profits have been realized and the renegotiation agreement merely imposes liability generally on the entire consolidated group for the profits found to be excessive, without fixing the separate liability, then the members of the group may not be allowed a deduction from their income for Federal tax purposes for the amount of excessive profits to be eliminated under the agreement, or a tax credit under Section 3806 of the Internal Revenue Code. The excessive profits must be so allocated even though some or all of the members of the consolidated group participate in filing a consolidated Federal tax return. (See paragraph 741.2(2).)

(3) The form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation is described in paragraph 502.13.

(4) To make such allocations of the excessive profits, a review of the unconsolidated financial statements of each member of the group must be made, and the record must show a proper basis for the allocation.

312. Where Consolidated Basis Not Used. Whenever parent and subsidiary companies are renegotiated not on a consolidated basis but separately, renegotiations with the individual members of the controlled group should be conducted concurrently if possible.

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the amount of such excess inventory as computed at the beginning of the month, until new computations at the beginning of the succeeding month shall be made. It will not be necessary to calculate actual physical inventories and orders on hand at the beginning of each month; a cumulative calculation may be made by applying the purchases made and orders taken in each month to the position at the beginning thereof, until the date of the succeeding physical inventory.

(d) *Treatment of Excess Inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter, and shall be allocated pro-rata between contracts with the Departments and subcontracts taken during the month under which the amounts received or accrued are subject to renegotiation, and other contracts, to the extent that such contracts and subcontracts require the use of the material, up to the end of the month in which the excess inventory is exhausted.

(e) *Exclusion of Profits Attributable to Increment in Value of Excess Inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits.

345. Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions.

345.1 Statutory Exemption. Subsection (i) (1) (D) of the 1943 Act provides that it shall not apply to—

> "(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code."

345.2 Internal Revenue Code. Section 101 (6) of the Internal Revenue Code exempts from taxation:

> "(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the

net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

346. Construction Contracts Awarded as a Result of Competitive Bidding.

346.1 **Statutory Exemption.** Subsection (i) (1) (E) of the 1943 Act provides that it shall not apply to—

"(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility".

346.2 Interpretation and Application of Exemption.

(1) This section of the 1943 Act is applicable only to amounts received or accrued for fiscal years ending after June 30, 1943 (regardless of the date when the contract was made) under any contract which meets all of the following conditions:

(a) The contract is a contract with a Department (i. e., is a prime contract). The exemption has no direct applicability to subcontracts—but see paragraphs 347 and 356.2 for the principles governing exemption of subcontracts under prime contracts as to which this exemption is applicable.

(b) The contract is for the construction of a building, structure, improvement or other similar facility. The exemption has no applicability to contracts for the furnishing of materials or supplies even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts for the furnishing or installation of machinery or equipment.

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or facility from a contract for the furnishing or installation of machinery and equipment, regard is to be had to the subject matter of the contract. If the subject matter of the contract would, as the subject matter of a subcontract, constitute machinery or equipment within the principles stated in paragraph 335.2(2) and 335.2(5) of these Regulations, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or facility, but will be regarded as a contract for the furnishing or installation of machinery or equipment. In a case where the construction of a building, structure, improvement or facility and

the furnishing or installation of machinery or equipment are embraced within a single contract, the undertaking for the construction job may be severed from the agreement to furnish or install the machinery or equipment and an appropriate finding made as to that portion of the entire contract which may properly be deemed exempt.

(3) If a construction contract is exempt from renegotiation under the provisions of this paragraph 346.2, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or facilities to be performed at or adjacent to the site of the original project are considered a part of the original construction contract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract.

(4) Determination whether this exemption is applicable to any particular contract shall be made by the Department or Service conducting the renegotiation in which such contract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

347. Subcontracts Under Exempt Contracts and Subcontracts.

347.1 Statutory Exemption. Subsection (i) (1) (F) of the 1943 Act provides that it shall not apply to

> "(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph."

347.2 Interpretation and Application of Exemption.

(1) It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i)(4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c)(6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision. (See paragraph 348.5.)

(2) In any case involving the renegotiable status of a subcontract under a prime contract the exempt status of which (by reason of the possible application of paragraph 346.2) has not been determined, the procedure shall be as follows: The Department or Service conducting the renegotiation of such subcontract shall advise the Assignments and Statistics Branch of the identity of the prime contract, the exempt status of which is subject to question. The Assignments and Statistics Branch shall thereupon inform the Department or Service to which the prime contractor has been assigned for renegotiation and such Department or Service shall thereupon determine whether such prime contract is exempt under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination and the said Branch shall thereupon notify the Department or Service conducting the renegotiation of the subcontract. In the event that such prime contractor has not been, and will not be, assigned for

renegotiation, or if previously assigned and such assignment has been cancelled, the Assignments and Statistics Branch shall so notify the Department or Service conducting the renegotiation of the subcontract and such Department or Service shall determine whether the prime contract would be entitled to exemption under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination.

348. Annual Receipts Under Statutory Minimum.

348.1 Statutory Provision. Subsection (c) (6) of the 1943 Act provides

> "(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 Computation of Aggregate Receipts and Accruals.

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (a) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348. For the purpose of applying this provision of the Act gross receipts and accruals will be computed without the elimination of inter-company sales.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve

months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 No Reduction by Refund Below Exemption.

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a)(5)(B) of the 1943 Act), no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a)(5)(B) of the 1943 Act, no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the refund may reduce the aggregate amount of gross receipts or accruals of any member below the floor specified in subdivision (1) or (2) of this paragraph but the aggregate of the recoveries from such contractors after adjustment for state income taxes must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. In the case of companies renegotiated on a consolidated basis the combined adjusted sales will be computed without the elimination of inter-company sales (see paragraph 348.2(2)).

(5) Except in those cases where prior to the commencement of renegotiation a contractor makes a retroactive price reduction or refund, applicable to the period which is the subject of renegotiation, in an amount at least equivalent to the maximum recovery permitted under the preceding provisions of this paragraph (so that if renegotiation proceedings were conducted there could be no recovery by reason of such limitation) the amount of excessive profits will be estimated by the renegotiating agency in the first instance without regard to the possible final effect of the above limitation on the amount of recovery.

(6) In applying the provisions of this paragraph 348.3 to any case in which an adjustment for state income taxes is required (see paragraph 389), excessive profits shall first be determined and the appropriate adjustment for state income taxes shall be made without regard to any limitations imposed by this paragraph upon the amount

of refund. The limitations of this paragraph shall then be applied in determining the amount to be refunded.

348.4 Tests of "Control". In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual Control*: An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership Control*: A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture Control*: A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other Cases*: Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation.

348.5 Subcontracts Under Contracts Exempt Under the Statutory Minimum. Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 Act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 Act. (See paragraph 347.2.)

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"(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

"(7) The term 'standard commercial article' means an article—

"(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

"(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

"(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled 'An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes', or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every material respect with such article with which it is so compared."

(3) Subsection (i)(2) of the 1943 Act provides

"(2) The Board is authorized by regulation . . . to interpret and apply the definition contained in subsection (a) (7)."

354.2 Interpretation and Application.

(1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it

is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved.

(3) For exemptions under the standard commercial article exemption, see paragraph 845.

355. Contracts and Subcontracts When Effective Competition Is Likely to Exist.

355.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 General Interpretation of Exemption. The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 Application of Exemption to Construction Contracts and Subcontracts.

(1) The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist,

(a) the contract or subcontract is one for the construction of a building, structure, improvement or other similar facility. The exemption has no applicability to contracts or subcontracts for the furnishing of materials or supplies even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing or installation of machinery or equipment;

(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular contract or subcontract shall be made by the Department or Service conducting the renegotiation in which such contract or subcontract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 Exemption. (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(4) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(2) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

357. Delegation of Authority to Make Permissive Exemptions. The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. Requests for Exemption. All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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Section 6

LIMITATIONS ON COMMENCEMENT AND COMPLETION OF RENEGOTIATION

360. Scope of Section. The Renegotiation Act of 1943 contains certain limitations on the commencement of renegotiation proceedings and their completion, which will be outlined in this Section. The related subject of termination of all renegotiation under the Act is covered by the succeeding Section 7.

361. Statutory Provision. Subsection (c) (3) of the Renegotiation Act of 1943 provides:

> "(3) No proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statement required under paragraph (5) is filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statement is so filed, whichever is the later, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4), such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement."

362. Commencement of Renegotiation Proceedings. Unless renegotiation proceedings are commenced either, (1) within one year after the close of the fiscal year in which the excessive profits were received or accrued, or (2) within one year after the statement required under subsection (c) (5) of the 1943 Act is filed with the War Contracts Board, whichever is later, the liability of the contractor or subcontractor for the fiscal year involved will be discharged. Under subsection (c) (1) of the Renegotiation Act of 1943 the mailing of notice by registered mail of the time and place of a conference to be held with respect to the determination of excessive profits constitutes the commencement of the renegotiation proceeding (see paragraph 241).

363. Completion of Renegotiation Proceedings. Renegotiation must be completed by the making of an agreement or the entry of an order within one year following the commencement of the renegotiation proceeding, or the liability of the contractor or subcontractor for

the fiscal year involved will be discharged. The one year period of limitation on completion of renegotiation proceedings does not apply, however, to the review by the War Contracts Board of an order made by a Secretary of a Department or any officer or agency to whom his authority in this respect has been redelegated. Also, the one year period may be extended by mutual agreement. A form which may be used for such extension is set out in paragraph 725, and reference is made to paragraph 821.1 concerning authority to execute the same. The formalities for its execution are similar to the formalities for the execution of a renegotiation agreement (see RR 502.12 including subdivision (5)).

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(c) the Chairman of the Price Adjustment Board of the Department concerned, in his discretion, may authorize the conditional allowance and the use of a special clause, or may advise the renegotiating agency that the item should be unconditionally allowed or disallowed as a cost in renegotiation, or may instruct the renegotiating agency to treat the item in such other manner as the Chairman, in his discretion, may consider appropriate. Additional provisions may be prescribed for insertion in the renegotiation agreement to assure payment by the contractor of any amounts which may become due in the future by reason of the special clause, if, in the opinion of the Chairman, the financial condition of the contractor is such that the interests of the Government require the same.

(5) *Costs Previously Allowed in Renegotiation.* No item of cost shall be deemed "properly chargeable" against or "allocable" to renegotiable business to the extent that such item has, in a previous renegotiation, been charged against or allocated to renegotiable business in determining excessive profits, notwithstanding that such item may be a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code in computing taxable net income for the taxable period corresponding to the fiscal period covered by the current renegotiation.

382. Salaries, Wages and Other Compensation.

382.1 Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in paragraph 381.4.

382.2 Allowances.

(1) Under Section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable". In determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for *reasonable* salaries for such partners as are *active* in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for

general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 Wage and Salary Stabilization.

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

(4) The National War Labor Board has issued directives setting forth its policies with respect to that portion of the wage and salary stabilization which is administered by such Board.

(5) In any case in which the renegotiating agency determines that there may have been a violation of any applicable stabilization law, executive order or regulation, the renegotiating agency will promptly submit all of the pertinent facts to the War Contracts Price Adjustment Board for a decision as to the proper procedure to be followed.

(6) Full compliance with the Stabilization Act does not preclude the disallowance as a deduction under the Internal Revenue Code of wage and salary payments in excess of "a reasonable allowance". No part of any amount estimated to be not allowable under the Internal Revenue Code will be allowed as a cost against renegotiable business.

382.4 Application of Stabilization Orders in Renegotiation. For fiscal years ending after October 27, 1942, the only limitation on salaries other than the usual test of reasonableness, is the prohibition (with exceptions) of increases in salary rate of over $5,000 annually, existing on October 3, 1942, and in salary rate of $5,000 or less annually, existing on October 27, 1942, without prior approval of governmental authorities. The exceptions referred to are set out in paragraph 851. They first appeared in Section 6 of the stabilization regulations and later in substantially similar form in Section 10 of the amended stabilization regulations referred to in subdivision (2) of paragraph 382.2. As set out in paragraph 851, they appear in the form contained in the amended stabilization regulations.

382.5 Brokers' Commissions. Commissions paid or payable to brokers or agents in connection with the procurement or performance of war contracts pursuant to a legally binding arrangement made in good faith prior to the fiscal year covered by the renegotiation will be allowed as a cost in the absence of special circumstances. Such special circumstances might exist where the broker or agent was a partner, officer or director of the contractor; or where any partner, officer or director of the contractor participated in the commissions paid to the broker or agent; or where the original arrangement between the contractor and the broker or agent was not made at arm's length. If it appears that the payment of the commissions might violate the provision in the contracts of any Department against contingent fees other than those paid to "bona fide established commission or selling agencies maintained by the contractor for the purpose of securing business", the question ordinarily will be taken up with the Purchases Division, Army Service Forces, the Procurement Legal Division of the Navy Department, or the appropriate division of the other Departments, and, subject to the provisions of paragraph 381.4 (2), the commissions may be disallowed. Whenever the payment of commissions is allowed to the contractor, consideration will be given to the prompt renegotiation of the broker or agent if the services he performed bring him within the definition of "subcontractor". (See paragraph 203.4 and 336.)

general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 Wage and Salary Stabilization.

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

(4) The National War Labor Board has issued directives setting forth its policies with respect to that portion of the wage and salary stabilization which is administered by such Board.

(5) In any case in which the renegotiating agency determines that there may have been a violation of any applicable stabilization law, executive order or regulation, the renegotiating agency will promptly submit all of the pertinent facts to the War Contracts Price Adjustment Board for a decision as to the proper procedure to be followed.

(6) Full compliance with the Stabilization Act does not preclude the disallowance as a deduction under the Internal Revenue Code of wage and salary payments in excess of "a reasonable allowance". No part of any amount estimated to be not allowable under the Internal Revenue Code will be allowed as a cost against renegotiable business.

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382.5 Brokers' Commissions. Commissions paid or payable to brokers or agents in connection with the procurement or performance of war contracts pursuant to a legally binding arrangement made in good faith prior to the fiscal year covered by the renegotiation will be allowed as a cost in the absence of special circumstances. Such special circumstances might exist where the broker or agent was a partner, officer or director of the contractor; or where any partner, officer or director of the contractor participated in the commissions paid to the broker or agent; or where the original arrangement between the contractor and the broker or agent was not made at arm's length. If it appears that the payment of the commissions might violate the provision in the contracts of any Department against contingent fees other than those paid to "bona fide established commission or selling agencies maintained by the contractor for the purpose of securing business", the question ordinarily will be taken up with the Purchases Division, Army Service Forces, the Procurement Legal Division of the Navy Department, or the appropriate division of the other Departments, and, subject to the provisions of paragraph 381.4 (2), the commissions may be disallowed. Whenever the payment of commissions is allowed to the contractor, consideration will be given to the prompt renegotiation of the broker or agent if the services he performed bring him within the definition of "subcontractor". (See paragraph 203.4 and 336.)

382.6 **Pension, Annuity, Stock Bonus and Profit Sharing Plans.** The policy set out below will be followed in connection with the allowance as an item of cost against renegotiable business of payments made by a contractor on account of any employee pension, annuity, stock bonus, or profit sharing plan (hereinafter referred to as "the plan").

(1) The deductibility for Federal income tax purposes of payments pursuant to the plan is governed by sections 23(a), 23(p) and 165 of the Internal Revenue Code. If the Bureau of Internal Revenue has determined that payments (including payments to bring annuities up to date) on account of the plan of the particular contractor concerned are deductible, such payments shall be allowed as an item of cost in renegotiation to the extent allocable to renegotiable business.

(2) If the Bureau of Internal Revenue has not finally determined the deductibility of such payments, the renegotiating Department must estimate the amount of such payments which is allowable as a deduction under sections 23(a), 23(p) and 165 of the Internal Revenue Code. The Department will be guided by the following general principles:

(a) the employer's payment into the plan, when added to other compensation paid the employee, cannot exceed reasonable compensation for services rendered by the employee beneficiary of the plan,

(b) the employees' rights under the plan must be nonforfeitable at the time the employer's payment is made *or* the plan must qualify under the provisions of section 165 of the Internal Revenue Code. In determining whether it does so qualify, the renegotiating agency should consult section 165 and the appropriate Treasury Regulations for the exact requirements for qualification. In general, the following requirements must be met: (i) the plan must imply a permanent as distinguished from a temporary program; (ii) it must not be a subterfuge for distribution of profits; (iii) it must be for the exclusive benefit of employees; (iv) it must be impossible, under the trust, to divert the trust property or income to purposes other than the employees' benefit; (v) it must cover a sufficient number of employees so as to be non-discriminatory; and (vi) in operation, the plan must not discriminate in favor of employees who are officers, stockholders or highly compensated employees. A plan which qualifies under the foregoing is not disqualified by the fact that the employer may be entitled to receive back amounts which result from erroneous actuarial computations.

(c) The payments on account of the plan, to be allowed as deductions for Federal income tax purposes, must actually have been paid within the taxable year except that as to payments into a qualified plan, a taxpayer on an accrual basis of accounting is deemed to have made a payment on the last day of the year if the payment is on account of such taxable year and is made within 60 days after the close of the taxable year of accrual.

(3) Payments made pursuant to any plan, like any other expense, should be allowed only to the extent allocable to renegotiable business, such amount to be determined in accordance with the principles applicable to the allocation of expenses generally.

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties payable to the licensor after the effective date of the notice under the statute, whether or not accruing before or after the date, and does not and cannot require the refund of any royalties which have been paid prior thereto.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are subject to an order under the Royalty Adjustment Act, the Departments will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the rates or amounts fixed in the order.

(4) In renegotiation with a licensee for a period prior to that in which royalty accruals are subject to an order under the Royalty Adjustment Act, no weight will normally be given to the determination made in a later order as to what rates and amounts of royalties are fair and just. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23(a) of the Internal Revenue Code. Particular attention should be given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code, even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention

or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee.

388.2 **Corporate Charitable Contributions.** Contributions of the character described in Section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under Section 23 (q).

388.3 **Cost Allowance in Connection with Raw Materials.** Reference is made to paragraphs 344.3 and 344.4 for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials.

389. State Income Taxes.

389.1 **In General.** Under subsection (a) (4) (B) of the 1943 Act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that in determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income (other than Federal taxes) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. The term "taxes measured by income" is interpreted to mean taxes which vary in accordance with the amount of net income of the taxpayer. Such term does not include taxes imposed upon or measured by gross income, gross receipts or sales. Such taxes measured by net income are herein referred to generally as "state income taxes" although actually they may not be designated as "income taxes" in the legislation imposing such taxes, and although they may be imposed by political sub-divisions other than a state. For the effect of the floor provision limiting refunds of excessive profits, see paragraph 348.3(6).

389.2 **Adjustment for State Tax Imposed at a "Flat Rate".**

(1) The amount of unadjusted excessive profits, without consideration of any state income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The state income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under Section 3806 of the Internal Revenue Code. (See paragraph 440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative

407.3 Treatment of Disallowed Costs and Adjustment of Fees.

(1) Disallowances of costs under cost-plus-fixed-fee contracts made in accordance with the terms of the contracts will, except as noted below, be deducted from the fee. If, however, any part of the amounts so disallowed are determinable business expenses which would otherwise necessarily have been incurred for the continued operation of the business as an enterprise and, if such amounts are deductions of the character permitted under the applicable provision of the Internal Revenue Code and the contractor has fixed-price business, the amount of such disallowances may be allocated to fixed-price renegotiable and non-renegotiable business in proper proportions. Reference is made to paragraphs 506.6 and 741.2(7), relating to waiver of claims under a cost-plus-fixed-fee contract when the amount of the item disallowed under such contract is allowed as a cost against renegotiable business.

(2) The resultant net fee in terms of percent of costs will be related to the percent fee provided for under the contract or contracts.

(3) Actual product costs will be related to the prices specified in the contract or contracts on which the fee is based.

(4) The resultant dollar fee will be related to the work done under the contract or contracts, the performance results, and the volume of business resulting from the contract or contracts.

(5) The elements stated in paragraphs 1, 2, 3 and 4 above should be reviewed, when appropriate, with the procurement officers responsible for the placing and supervision of the cost-plus-fixed-fee contracts for the purpose of determining whether or not the fee result is consistent with that intended when the contract or contracts were entered into.

407.4 Profit Margins.

(1) The margin of profit on cost-plus-fixed-fee contracts should be less than that on fixed-price contracts for the same volume of the same product under similar circumstances.

(2) If there has been a reduction of costs below the estimated costs on which the fee was based and it is clearly demonstrated that such reduction of costs is attributable to the contractor's own efforts, the fee should not be reduced merely because of this reduction in costs. The fees received under a cost-plus-fixed-fee contract should have a reasonable relationship to the services performed by the contractor.

408. Factors Requiring Consideration. The Renegotiation Act of 1943 specifies factors which must be taken into consideration in determining excessive profits and requires the consideration of additional factors when published in the regulations of the War Contracts Board.

409. General Policy. Reasonable profits in every case should be determined with reference to the particular factors present without limitation or restriction by any fixed formula with respect to rate of profit, or otherwise. Renegotiation should not result in a margin of profit based on the principle of a percentage of cost as profit. Contractors who sell at lower prices and produce at lower costs through

good management, improved methods of production, close control of expenditures and careful purchasing should receive a relatively more favorable determination than those who do not. Mere claims of the contractor, in the above terms, for favorable consideration cannot be recognized. They must be supported by established facts, analyses and appropriate comparisons which clearly demonstrate their validity.

410. Efficiency of Contractor.

410.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities, and manpower."

410.2 Comment. Consideration is to be given to the contractor's record for efficiency or lack of efficiency in operations with particular attention to the following:

(1) The quantity of production; for example, in relation to available physical facilities; the meeting of production schedules; the expansion of facilities; the maximum use of available production facilities.

(2) The quality of production; for example, the record of maintenance of standards of quality; the rejection record; reported mechanical or other difficulties in the use or installation of the product.

(3) The reduction of costs; for example, the decrease in costs per unit of production or per unit of sales as between fiscal years and as compared with other contractors producing the same or similar products where the operations are reasonably comparable; the decrease in administrative, selling or other general and controllable expenses; the decrease in prices paid vendors on purchased materials and subcontracted items or units. (See paragraph 411.2 (1)-(3).)

(4) The economy in the use of materials, facilities and manpower; for example, the decrease in quantity of materials used in relation to production and the number of employees in relation to production; the substitution of non-critical materials for critical materials; the reduction of waste.

411. Reasonableness of Costs and Profits.

411.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(ii) reasonableness of costs and profits, with particular regard to volume of production, normal pre-war earnings, and comparison of war and peacetime products."

411.2 Comment.

(1) Consideration is to be given to the reasonableness or the excessiveness of costs and profits of the contractor. Comparisons

CHAPTER V

AGREEMENTS AND STATEMENTS

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CHAPTER V
AGREEMENTS AND STATEMENTS

500. Scope of Chapter. This Chapter covers the completion of renegotiation. Section 1 deals with the form, preparation and administration of agreements. Section 2 relates to the statement to be furnished the contractor in connection with determinations by agreement or order.

Section 1
AGREEMENTS AND CLEARANCES

501. General.

501.1 Statutory Authority.

(1) Subsection (c)(4) of the 1943 Act provides as follows:

> "For the purposes of this section the Board may make final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (A) such agreement shall not for the purposes of this section be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (B) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding."

(2) Subsection (c)(1) of the 1943 Act provides, in part, as follows:

> "Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued."

501.2 Uses of Agreements and Clearances. The following types of instruments are used in connection with renegotiation:

(1) *Renegotiation agreements.* These are to be used when, upon conclusion of the renegotiation proceedings, a final agreement is reached between the contractor and the renegotiation officials of the Government that a certain amount of excessive profits is to be eliminated. A form of such agreement is set forth in these Regulations, paragraph 741.1.

(2) *Clearances.* These are to be used where, upon a review of the financial and other data submitted by the contractor, it is formally determined that there are no excessive profits for the fiscal year under review. (See paragraph 742.)

502. **Standard Form of Agreement.**

502.1 **In General.** When, as a result of renegotiation, an agreement has been reached with a contractor for the elimination of excessive profits, such agreement will ordinarily be evidenced by the execution of the standard form of renegotiation agreement, which is set forth in paragraph 741.1 of these Regulations. The provisions of the standard form of agreement are discussed in the succeeding paragraphs.

502.2 **Article 1: Profits to be Eliminated.** The agreed dollar amount of excessive profits to be eliminated, after giving effect, in accordance with subsection (a)(4)(B) of the 1943 Act, to any adjustment for taxes, other than Federal taxes, measured by income, will be set forth in Article 1. Ordinarily such amount will be the excessive profits determined to have been received or accrued during a particular fiscal year under all of the contractor's contracts and subcontracts subject to renegotiation. When the renegotiation covers only contracts and subcontracts completed during a fiscal year or has been conducted only with respect to certain contracts and subcontracts, the language used in Article 1 should be modified accordingly. When the amount of refund is limited by the application of the provisions of paragraph 348.3, an appropriate statement to that effect will be included in Article I of the Renegotiation Agreement (see suggested form of statement in footnote to Article 1, paragraph 741.1).

502.3 **Article 2: Warranty: Exhibit A: Exhibit B.** Renegotiation is, in large measure, conducted upon the basis of information and data submitted by the contractor, particularly financial data. Since such material is accepted in good faith by the Government as the basis for conducting the renegotiation, it is appropriate that the contractor warrant its correctness. Article 2 contains such a warranty, which extends to and includes the summarized data set forth in Exhibit A (see paragraph 503) which is to be annexed to the agreement. If the renegotiation includes subsidiaries of the contractor and has been conducted on a consolidated basis, a list of the subsidiaries will be set forth on an Exhibit B to be annexed to the agreement, the correctness of which the contractor will also warrant (see paragraph 504). An appropriate modification will be made in Article 2 when Exhibit B is used. (See paragraph 741.2(2).)

502.4 **Article 3: Tax Credit Under Section 3806 of the Internal Revenue Code.**

(1) In most instances the contractor will have been assessed Federal income or income and excess profits taxes on the profits to be eliminated. A credit equal to the amount of such taxes is required by the Renegotiation Act to be allowed against the refund to be made in accordance with Section 3806 of the Internal Revenue Code. The provisions of Article 3 cover the contractor's representation that the profits to be eliminated were included in income in his tax return for the fiscal period involved and his agreement to procure a computation by the Bureau of Internal Revenue of the amount by which his taxes for that fiscal period are decreased by reason of the elimination of such profits from income. The procedure for procuring such computation is set forth in paragraph 442 of these Regulations.

(2) If the renegotiation is concluded before the contractor has filed his Federal income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in paragraph 741.2(3)(a) of these Regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under Section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in paragraph 741.2(3)(b) of these Regulations.

502.5 Article 4: Terms of Payment.

(1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in paragraph 741.2(5) of these Regulations. The Department or Service which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company or any of such corporations, the payment provision, in accordance with the footnote to Article 4 on the standard form will require payment of the amount thereof to the RFC Price Adjustment Board.

(2) For the purpose of determining the portion of the profits which are to be eliminated which were derived from such prime contracts, the Department conducting renegotiation will segregate the amounts received or accrued under such contracts from amounts received or accrued under other renegotiable contracts and subcontracts involved in the renegotiation of a particular contractor. It will also generally segregate the profits derived from such prime contracts. Where, however, it is indicated that the margin of profit attributable to contracts with the RFC subsidiaries is substantially the same as that attributable to other contracts and subcontracts involved in the renegotiation, a fair allocation of the profits to be eliminated may be effected by prorating the amount of the refund on the basis of the amount of renegotiable business attributable to contracts with the RFC subsidiaries and the amount of such business attributable to other contracts and subcontracts. Accordingly, the Department conducting renegotiation may determine the amount of the renegotiation refund to be paid to the RFC Price Adjustment Board on such basis where it is believed that the application of the same will result in a fair and reasonably accurate result.

(3) Responsibility for the collection of, and for the maintenance of records concerning, any amounts due the RFC Price Adjustment

Board under renegotiation agreements, shall rest with the RFC Price Adjustment Board, and any such agreements providing for refunds to the RFC under the 1943 Act shall be referred to the RFC Price Adjustment Board for the collection of that portion of the refund payable to that Board. The Department conducting the renegotiation will retain responsibility for the collection of only that portion of the refund which is payable into the Treasury of the United States. In such cases, an authenticated copy of the renegotiation agreement shall be forwarded to the RFC Price Adjustment Board, through the Assignments and Statistics Branch, Renegotiation Division, ASF. The Assignments and Statistics Branch should be promptly notified of any default in the collection of any installment due under such agreements and the enforcement of the obligations under the agreement properly coordinated under the supervision of the War Contracts Price Adjustment Board.

(4) In the case of suit for the collection of any amounts due under any renegotiation agreements in which the RFC is entitled to a portion of the refund, under ordinary circumstances the Assignments and Statistics Branch should assign such case for collection to the Department then having the predominant interest in the balance of the refund.

(5) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(6) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see paragraph 505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(7) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in paragraph 422 of these Regulations.

(8) Provision is made in the standard form of renegotiation agreement for the payment of interest on defaulted installments. (See paragraph 741.1 subdivision (4) and paragraph 741.2(5).) The rate specified in the agreement is "the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest." (See paragraph 807.)

502.6 **Article 5: Article Requiring Elimination of Additional Excessive Profits.** The provision set forth in paragraph 741.1 of these Regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the Renegotiation Act of 1943 are increased.

502.7 **Article 6: Covenant Against Contingent Fees.** This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts.

502.8 **Article 7: Officials Not to Benefit.** This article is also a standard provision in most Government contracts, required by Revised Statutes, Section 3741, as amended (41 U. S. C. Sec. 22).

502.9 **Article 8: Discharge of Liability.** In consideration of performance by the contractor of the terms of the agreement he is granted a discharge of liability in accordance with subsection (c)(4) of the Renegotiation Act. When the renegotiation covers only contracts and subcontracts completed during the fiscal year or has been conducted only with respect to certain contracts or subcontracts, care should be taken that Article 8, when read in connection with Article 1 (paragraph 502.2) discharges the liability of the contractor only with respect to the contracts and subcontracts actually renegotiated.

502.10 **Article 9: Renegotiation Rebate.** This article specifically reserves to the contractor his rights under subsection (a)(4)(D) of the Renegotiation Act in the event that a recomputation of his amortization deduction under Section 124(d) of the Internal Revenue Code should entitle him to a rebate.

502.11 **Article 10: Execution of the Agreement.** The persons executing the agreement on behalf of the contractor and on behalf of the Government state that they do so upon proper authority.

502.12 **Formalities of Execution.**

(1) If the contractor is a corporation, the agreement must be accompanied by a certified resolution of the Board of Directors of the contractor (or the equivalent committee or other body). The form of the resolution, the adoption of the resolution, and the execution of the certificate must all be in accordance with the formalities required by the particular state laws involved. The resolution itself should state:

(a) that the agreement is being entered into pursuant to the Renegotiation Act;

(b) the amount of profits to be eliminated—and the fiscal year for which they are to be eliminated;

(c) the title of the corporate officer who is being authorized to execute the agreement on behalf of the corporation; and

(d) the title of the corporate officer authorized to affix and attest the corporate seal thereon.

The certificate, certifying the adoption of the resolution should state:

(a) the name and capacity of the officer signing the certificate;

(b) the body adopting the resolution (normally this will be the Board of Directors, but may, in a particular case, be an Executive Committee or similar body);

(c) the date of the meeting;

(d) the fact that a quorum of the Board (or other body) was present throughout the meeting;

(e) that the resolution was duly adopted;

(f) if the particular agreement is specifically referred to in the resolution, that the agreement to which the certified resolution is attached is the same as that referred to in the resolution; and

(g) that the resolution has not been modified or rescinded and that it is in full force and effect.

If the resolution is adopted by an Executive Committee or similar body (other than the Board of Directors) the certificate must also include satisfactory evidence of the body's authority to act.

(2) The form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation is described in paragraph 502.13.

(3) If the contractor is a partnership, all general partners therein should execute the agreement.

(4) If the contractor is a joint venture, each participant should execute the agreement.

(5) If the authority of the person signing the agreement is based upon a written instrument or court order or provision of law (as where the agreement is executed on behalf of a corporation in dissolution, or an estate or trust, or where the authority derives from a power-of-attorney), the agreement should be accompanied or supported by proper evidence of such authority.

(6) The Department conducting the renegotiation has authority to depart from the requirements of this paragraph in its discretion.

502.13 Consolidated Renegotiation—Agreement, Form and Execution. If a group consists of affiliated enterprises, other than parent and subsidiary corporations, the standard form of agreement should be rewritten to include as parties thereto all members of the group to which are allocated any amount of the excessive profits and it must be executed by each such member of the group. If the group consists of parent and subsidiary corporations, the renegotiating agency may require the standard form of agreement to be re-written to include as parties thereto, in addition to the parent corporation, all subsidiaries to which are allocated any amounts of the excessive profits and each such subsidiary must execute the agreement. The renegotiating agency may, however, use the standard form of agreement executed only by the parent corporation. In such event, the following procedure will be followed: (a) the variation in Article 2 set forth in paragraph 741.2(2) shall be included in the agreement; (b) Exhibit B to the agreement must contain a clause by which each subsidiary to which is allocated any portion of the excessive profits agrees to pay such portion; (c) Exhibit B must be duly executed by each such subsidiary and an appropriate resolution authorizing such execution must be furnished (see paragraph 502.12); and (d) Exhibit B will also provide that payment by the parent corporation will be applied ratably to satisfy the liability of each member of the group. A form of Exhibit B to be used where the foregoing clauses are required, is set forth in paragraph 741.2(2).

503. Exhibit A. There shall be attached to every renegotiation agreement providing for the elimination of excessive profits an exhibit

designated "Exhibit A," which shall contain as a minimum, the financial data and information referred to in paragraph 741.3. In the discretion of the Department conducting the renegotiation, any additional financial data or information may be included in Exhibit A.

504. **Exhibit B.** When the contractor has subsidiaries, there shall be attached to the renegotiation agreement a list of such subsidiaries in detail. Such list shall be designated as "Exhibit B." Ordinarily, all of such subsidiaries will have been consolidated with the parent company for purposes of the renegotiation agreement, and if any has not been so consolidated, that fact should be specially noted on Exhibit B. The amount of excessive profits, if any, allocated to each subsidiary must be shown on such exhibit. A form of clause referring to Exhibit B for insertion in the renegotiation agreement and a form of Exhibit B are set out in paragraph 741.2 subdivision (2). (See also paragraph 741.4.)

505. **Exhibit C.** If the provisions for payment of the cash refund or for other method of elimination of excessive profits are such as cannot be readily set out in Article 4 of the standard form of agreement, such provisions may be set out in an additional exhibit to the agreement, designated "Exhibit C" which should be attached to the agreement and incorporated therein by a reference thereto in Article 4 of the agreement.

506. **Additional Provisions: Variations.**

506.1 **In General.** The basic provisions of the standard form of agreement set forth in paragraph 741.1 of these Regulations are to be used in all cases except as otherwise noted in this paragraph 506. Additional provisions may be added when required to fit particular situations. Paragraph 741.2 of these Regulations contains forms of clauses which, when appropriate, should be used to meet certain of these special situations. Variations in language are permissible where necessary, but unless otherwise noted in this paragraph 506 in no event may any such change be made, or any provision be added to the agreement, when the effect would be to alter or modify the substance or intent of the basic provisions. The conclusion of the official signing the agreement on behalf of the Government pursuant to duly delegated authority that the agreement meets the requirements of this Regulation shall be evidenced by the fact of execution and shall be conclusive. (See paragraph 821.1.)

506.2 **Forward Pricing Clause.** The Renegotiation Act of 1943 specifically authorizes provision in the renegotiation agreement, by agreement with the contractor, for the elimination of excessive profits likely to be received or accrued in the future. When agreement cannot be reached upon specific price reductions, use may be made in the renegotiation contract of the article set forth at paragraph 741.2(1). In this connection reference is made to paragraph 430 and following. If specific price reductions are agreed upon, the agreement should clearly identify the contracts affected by such price reductions in order that the Department administering the agreement can determine whether the contractor has complied therewith.

506.3 **Anti-Discrimination Clause.**

(1) Executive Order No. 9346 dated May 27, 1943 requires "all contracts hereafter negotiated or renegotiated" to contain an article of the type set forth in paragraph 741.2(4) of these Regulations.

(2) Whenever a renegotiation agreement, executed under the Act, expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause, then the renegotiation agreement shall include the provision set forth in paragraph 741.2(4) of these Regulations. Except in such cases the requirements stated in (1) above do not apply to renegotiation agreements.

(3) If the renegotiation agreement is to be followed by a supplemental agreement or agreements modifying the terms of existing contracts with respect to future deliveries, each such supplemental agreement will provide for the inclusion in the contracts so modified, of the anti-discrimination clause.

506.4 **Clause to Be Used in Certain Cases Where Renegotiation Is Conducted on Completed Contract Basis.** Whenever renegotiation is conducted on a completed contract basis pursuant to the request of a contractor in the form therefor which is set forth in paragraph 723, the clause set forth in paragraph 741.2 (6) must be included in the renegotiation agreement. In each such case, a copy of such form executed by the contractor requesting renegotiation on a completed contract basis (paragraph 723) must be attached to the renegotiation agreement as an exhibit as provided in the clause set forth in paragraph 741.2 (6).

506.5 **Clause Covering Conditional Allowance of Cost.** If pursuant to the procedure set forth in paragraph 381.4 (4) of these Regulations, an item of cost is allowed conditionally pending final determination of its allowability as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code, an appropriate clause will be inserted in the renegotiation agreement. The form of the clause may vary, but essentially it will consist of an agreement by the contractor to repay, as additional excessive profits, the amount of the item allowed as a cost in renegotiation which is finally determined to be not allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code. As pointed out in paragraph 381.4 (4), the clause must be approved by the Chairman of the Price Adjustment Board of the Department concerned before it can be used in the renegotiation agreement.

506.6 **Waiver of Claims Under Cost-Plus-Fixed-Fee Contracts.** If an item of cost is allowed in renegotiation for an item for which a claim for reimbursement under a cost-plus-fixed-fee contract has been made and disallowed by the Government, the contractor should waive and release such claim under the cost-plus-fixed-fee contract involved to the extent that the amount of the claim is allowed as a cost against renegotiable business (see paragraph 407.3). There is set out in paragraph 741.2(7) an appropriate form of clause relating to such claims. The form of clause may be varied to fit the particular case.

506.7 **Other Special Provisions.** Examples of additional special clauses are set out in the supplement to the standard form of agreement (paragraph 741.2). It is recognized that these provisions are not exclusive and that many circumstances will be encountered requiring other clauses and provisions. The form and substance of such provisions will be within the discretion of the Department conducting the renegotiation, subject to the limitation indicated in paragraph 506.1 of these Regulations.

507. **Prohibited Provisions.**

507.1 **Reservations Impairing Finality of Agreement.** No renegotiation agreement is acceptable if it or any authorizing resolution or letter of transmittal contains any reservation which might be interpreted as permitting the contractor to reopen the agreement if the Renegotiation Act is amended or declared unconstitutional, or interpretations of the Act are changed, or new exemptions are established or for any similar reason.

507.2 **Provision for Refund by the Government.** Other than recognition of the right to a renegotiation rebate in accordance with subsection (a)(4)(D) of the 1943 Act by reason of a future recomputation of the amortization deduction pursuant to section 124(d) of the Internal Revenue Code (see paragraph 502.10), no provision shall be made in any renegotiation agreement which would have the effect of requiring the Government under any circumstances to repay all or any part of any payment made to it thereunder.

507.3 **Periodic Refunds of Future Excessive Profits.** As part of the general policy of discouraging excessive prices and of encouraging price reductions, final agreements in renegotiation should not contain provisions for any periodic or other refunds by contractors of excessive profits realized after the date of such agreements. However, it is appropriate for such agreements to contain provisions for future price reductions or stated discounts from an agreed upon price.

508. **Clearances.**

508.1 **When Given.** If, as a result of renegotiation, it is found that no excessive profits have been received by or accrued to the contractor during the fiscal year under consideration, the contractor should be given a clearance for such year.

508.2 **Use and Form of Clearance Notice.**

(1) The form of clearance notice set forth in paragraph 742 should be used in all cases unless the contractor requests a formal clearance agreement.

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CHAPTER VII
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702. Letters of Preliminary Inquiry.

702.1 Letter of Preliminary Inquiry (For Use by Assignments and Statistics Branch).

In reply refer to:
LPI No. . . . . .

War Contracts Price Adjustment Board
Joint Price Adjustment Board
Room 3D 573, The Pentagon
Washington 25, D. C.

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish to the undersigned the information called for by the "Standard Form of Contractor's Report." On the basis of information thus presented a determination will be made as to whether or not renegotiation proceedings will be commenced.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report", which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed, in duplicate, within thirty days of the date of this letter. It is to be sent to the undersigned, Room 3D 573, The Pentagon, Washington 25, D. C. If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board
Joint Price Adjustment Board

Enclosures:

Standard Form of Contractor's Report (3)

Instructions for Preparation of
Standard Form of Contractor's Report

Pamphlet containing Renegotiation Act of 1942 and 1943

702.2 Letter of Preliminary Inquiry (For Use in Assigned Cases).

(For use in cases already assigned)

In reply refer to:
LPI-A No. . . . . .

(Letterhead of Appropriate Department or Section)

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

The matter of conducting your statutory renegotiation proceedings has been assigned to this office.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish the information called for by the "Standard Form of Contractor's Report." On the basis of the information thus presented, a determination will be made as to whether or not further renegotiation proceedings will be necessary.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report" which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act, if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed with the undersigned, in duplicate, within thirty days of the date of this letter.* If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

If all of the information called for by this form has been furnished the Price Adjustment Agency to which the contractor has been assigned, refer to the final paragraph of instructions.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

(Appropriate Authorized Signature)

Enclosures:
Standard Form of Contractor's Report (3)
Instructions for Preparation of
Standard Form of Contractor's Report
Pamphlet containing Renegotiation Act of 1942 and 1943

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* Omit "within thirty days of the date of this letter" if this letter is being sent within thirty days of the time for filing prescribed by the 1943 Act.

702.3 Alternative Form of Letter of Preliminary Inquiry.

WAR CONTRACTS PRICE ADJUSTMENT BOARD
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

Subsection (c) (5) (A) of the Renegotiation Act of 1943 requires concerns which are subject to that Act to file financial statements in accordance with the regulations prescribed by the War Contracts Price Adjustment Board. A penalty is prescribed for non-compliance. Copies of the Act and pertinent Regulations are enclosed herewith as well as the required form of Report.

The records of this office do not indicate that you have filed such a financial statement. Although without authority to waive or extend the requirements of the Act with respect to time of filing, we bring this matter to your attention with the suggestion that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the required financial statement with the least possible delay.

Clearance and Assignment Officer
on behalf of
WAR CONTRACTS PRICE ADJUSTMENT BOARD

Enclosures:

Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements

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702.4 Follow-up to Letter of Preliminary Inquiry from Assignments and Statistics Branch.

In reply refer to:
LPI No. . . . . .

WAR CONTRACTS PRICE ADJUSTMENT BOARD
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

We attach a copy of a communication sent to you under date of . . . . . by which we requested that you file with this office the "Standard Form of Contractor's Report" which was enclosed therewith. We have no record of your having filed such a Report nor of the receipt of a statement from you that the Renegotiation Act of 1943 is not applicable in your case.

Your attention is called to the fact that by the provisions of subsection (c) (5) (A) of the Act, the "Standard Form of Contractor's Report" is required to be filed by all concerns subject to that Act. A penalty is prescribed for non-compliance.

Although without authority to waive or extend the requirements of the Act with respect to the time for filing of Reports, we suggest that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the Report with the least possible delay.

On the other hand, if your business did not exceed the statutory minimum as defined in subsection (c) (6) of the Act, you are not required to file the "Stand-

ard Form of Contractor's Report" to which we refer. In that event, it would be helpful for the maintenance of our records if you would file, in duplicate, the enclosed form entitled "Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943".

Clearance and Assignment Officer
on behalf of
WAR CONTRACTS PRICE ADJUSTMENT BOARD

Enclosures:

(Budget Bureau No. 49-R182) (LPI Letter)
Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements
Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943

703.3 Form No. 103 (Suggestion for Reassignment).

To Be Submitted in Quadruplicate

To: Assignments and Statistics Branch
War Contracts Price Adjustment Board
Room 3D 573, The Pentagon
Washington, D. C.

Subject:

1. The above contractor has been assigned to this office for renegotiation of its 1943 fiscal year. Reassignment is suggested for the following reasons(s):

☐ Principal war product.....
☐ Substantial predominance of interest in contracts held by.....
☐

2. The above contractor (has) (has not) been consulted with respect to propose reassignment and (has) (has not) indicated approval.

PRICE ADJUSTMENT BOARD (SECTION)

1st Ind.

To: Price Adjustment Board (Section)

☐ The above contractor is hereby reassigned to .....
☐ It is deemed inappropriate to reassign the above contractor.

For the Director of the Renegotiation Division:

Chief, Assignments and Statistics Branch

24-64954

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704. Forms for Cancellation of Assignment.

704.1 Statement by Contractor of Non-Applicability.

STATEMENT BY CONTRACTOR

Non-Applicability of the Renegotiation Act of 1943

To the War Contracts Price Adjustment Board:

We acknowledge receipt of a copy of the pamphlet entitled "Renegotiation" containing the text of the Renegotiation Act of 1943 and have noted particularly the provisions of subsections (a) (5), (c) (5) (A) and (c) (6) of that Act.

We certify that the aggregate receipts or accruals of the undersigned and of all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts with the War Department, Navy Department, Treasury Department, Maritime Commission, War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Company and Rubber Reserve Company and under subcontracts as defined in the Act, *including* those which are exempted under subsection (i) of the Act or which expressly provide that they are not subject to renegotiation pursuant to the authority granted by said subsection (i) (but not including commissions and other income within the meaning of subsection (a) (5) (B) of the Act), did not exceed $500,000 for the fiscal year ended ..... 194....; and we further certify that commissions and other income within the meaning of subsection (a) (5) (B) of the Renegotiation Act of 1943 received or accrued by the undersigned and by all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts and subcontracts above referred to did not exceed $25,000 for the same fiscal year.

In making this certification recognition is given to the fact that in order to qualify for exemption it is necessary that both of the above conditions should be met; i. e., that the total of receipts or accruals under contracts with the above-named Departments or agencies and subcontracts as defined in the Act (excluding commissions and other income below mentioned) does not exceed $500,000 *and* that the total of commissions and other income within the meaning of subsection

(a) (5) (B) of the Act does not exceed $25,000. Accordingly, we do not intend to file a financial statement in conformity with the provisions of the first sentence of subsection (c) (5) (A) of the Act. If we have been assigned for statutory renegotiation, we request that such assignment be cancelled.

Very truly yours,

.....
Name of Contractor

By .....
(Principal officer, partner or proprietor)

.....
Title of officer

.....
Address of Contractor

Dated ..... 194. .

In preparing this form, there will be printed on reverse side, subsections (c) (5) (A), (c) (6) and (a) (5) of the 1943 Act.

704.2 Notice to Contractor of Cancellation of Assignment.

NOTICE TO CONTRACTOR OF CANCELLATION OF ASSIGNMENT

Date .....

Contractor's Name
Address

Dear Sir:

Upon review of the information submitted by you in connection with renegotiation under the Renegotiation Act, as amended, this office recommended to the War Contracts Price Adjustment Board that your assignment to this office for renegotiation be cancelled for your fiscal year ending .....

This office is advised that such assignment has been cancelled in accordance with its recommendation.

While such cancellation does not operate as a release of liability under the Renegotiation Statute, nevertheless, in the absence of further developments no further action is contemplated.

Very truly yours,

(*Name of Renegotiating Department or Service*)

704.3 Request by Renegotiating Agency for Cancellation.

See paragraph 206.2

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paragraph 1 (b) above and in determining profits derived therefrom, as though the contractor had kept (its) (his) books and had filed (its) (his) Federal income tax returns with respect to such contracts and subcontracts on a completed contract basis, including the application of the $500,000 exemption set forth in subsection (c) (6) of the Renegotiation Act and the application of the $500,000 "floor" as interpreted in paragraph 348.3 of the Renegotiation Regulations.

(b) With respect to any subsequent fiscal year, all of the contractor's construction contracts and subcontracts completed within such fiscal year, which are by law subject to renegotiation, may at the option of the renegotiating agency be renegotiated as a group and the powers of the War Contracts Price Adjustment Board may at such option be exercised with respect to such group, and in any such renegotiation, the principles set forth in subparagraph 3 (a) above will be applied.

4. The undersigned agrees that this request, after having been delivered to the renegotiating agency, cannot be withdrawn without the written consent of the renegotiating agency.

IN WITNESS WHEREOF, the undersigned has executed this request as of the ..... day of .... 194...

.....

By .....
(Title of Officer)

ATTEST:

.....
(Secretary)
(To be used if executed by a corporation.)

APPROVED:

.....
(Insert name and official title of person executing the approval in behalf of the government.)

NOTE: If the contractor is a corporation, the request will be accompanied by a certified copy of the resolution of the Board of Directors authorizing the request and the agreements therein contained. If a partnership or joint venture the request will be executed by all members of the partnership or joint venture.

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724. Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

724.1 Instructions for Preparation of Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

CONSTRUCTION CONTRACTORS, ARCHITECTS, AND ENGINEERS INFORMATION AND WORK SHEET FOR RENEGOTIATION.

Information indicated in parts I and II herein is required for renegotiation under the Renegotiation Act, as amended. Any part of this information which the contractor has submitted, either in the "Standard Form of Contractor's Report (for Construction Contractors,

Architects, and Engineers)" or in connection with a previous renegotiation, may be omitted, provided reference is made to the manner, time, and place of its submission. If any statements or information designated are inapplicable in a particular case, the contractor should so state and give the reason therefor. In financial statements all cents may be omitted. The contractor should so indicate if he prefers to discuss with the renegotiation authorities the methods of segregation of gross earnings and allocation of costs and expenses. In such cases, the contractor should submit all other information requested herein.

The contractor should certify that all information and data (subject to qualifications, if any, specifically set forth) are true and correct to the best of his knowledge and belief.

Part I

INSTRUCTIONS FOR PREPARATION OF EXHIBITS

The enclosed exhibits are provided for the contractor's use in this connection. Should he submit in some other form his income data separated as between renegotiable and nonrenegotiable business, these exhibits should be used as guides.

Exhibit I

For an interpretation of items entering into renegotiable and nonrenegotiable business, repectively, refer to "Standard Form of Contractor's Report (for Construction Contractors, Architects, and Engineers)," Instructions 3, 4, and 6.

Line 1. Gross Earnings.—Enter total dollar volume of all work done under prime contracts, subcontracts, and purchase orders and other earnings, segregated as indicated by the columnar headings. For lump-sum and unit-price contracts (column A) show total contract price. For cost-plus-fixed-fee contracts (column B) show total reimbursements and fees earned. On joint venture lump-sum and unit-price contracts enter contractor's proportionate share of the total contract price (column C). On joint-venture cost-plus-fixed-fee contracts enter his proportionate share of the reimbursable costs and fees (column C). (Joint ventures are renegotiated as separate entities.) Column D is to be used only by contractors who report for tax purposes on other than the completed contract basis, but who prepare this exhibit I on a completed contract basis.

Line 2. Job Costs.—Enter in each column the job costs applicable to the corresponding contract earnings entered on line 1. For cost-plus-fixed-fee contracts (column B) include both reimbursable and direct nonreimbursable costs. For joint-venture contracts (column C) show proportionate share of costs.

Lines 5, 8, and 9. General and Administrative Expenses; Other Income; Other Deductions.—Allocate to the classifications indicated for each column in accordance with the most equitable method in view of the particular situation.

Line 11. Rental Income From Owned Equipment (net).—Enter on this line in column E the renegotiable portion of the net amount

(gross less applicable costs and expenses) received or accrued from the rental of equipment owned by the contractor; in column F the nonrenegotiable portion of such net earnings; and in column G the sum of the amounts entered in columns E and F, respectively. If these amounts are significant, the contractor should support them by a separate schedule showing gross earnings from such rentals, distributed between renegotiable and nonrenegotiable business, and costs and expenses applicable to each classification, with resultant net earnings as shown in columns E, F, and G, respectively.

Line 12. Sales and Other Earnings.—Enter on this line in column E the renegotiable portion of the net income from sales and services not included in columns A to D, inclusive; in column F the nonrenegotiable portion of such income; and in column G the sum of the amounts entered in columns E and F, respectively. The contractor should support these amounts by a separate schedule showing net sales and/or income from services, cost of sales and/or services, expenses applicable to each classification, and resultant net profits, as shown in columns E, F, and G, respectively.

Lines 14, 15, 16, 17, and 18.—Amounts on these lines are to be entered in column G only.

Supporting Schedules. — Furnish supporting schedules as directed on the back of exhibits I and IA (also IB if applicable).

Part II

GENERAL INFORMATION

A. One copy each of the following:

1. Balance sheets as of the close of the year under review and each of the three (3) preceding years, and related analyses of surplus or net worth.
2. Income statement as regularly prepared, for the year under review.
3. Federal income and excess profits tax returns filed for the year under review.
4. Detailed or long form audit report, if available.

B. *Information relative to affiliates:*

1. A statement showing the names and addresses of the contractor's parent, subsidiary, and affiliated companies and organizations, with a brief description of the character of their business, the nature and extent of their affiliation, and an expression of the contractor's opinion as to whether or not, during the year under review, they had business subject to the Renegotiation Act, and as to which should be consolidated for purposes of renegotiation.

2. If the financial statements are submitted on a consolidated basis, similar financial statements for each subsidiary included in such consolidation.

3. The basis of setting intercompany prices (including rentals) when affiliates or subsidiaries are not consolidated.

4. A statement of sales and rentals to and purchases and rentals from subsidiaries and affiliates.

Instructions.—The terms "affiliates" and "affiliated companies and organizations" means all persons under the control of or controlling, or under common control with the contractor.

C. A statement or schedule, amplified by adequate explanations, with respect to each of the following:

1. Type and approximate value of any materials or other assistance received from the Government or prime contractors;

2. The effect of raw material exemptions and "excess inventory" calculations provided for in subsection (i) of the Act;

3. Sales of materials and rentals of equipment to subcontractors entering into repurchases from them;

4. Interdepartmental sales not eliminated;

5. Any basic changes during the year under review in accounting methods, depreciation rates, and/or methods of inventory valuation;

6. Volume of direct renegotiable earnings from contracts with the subsidiaries of Reconstruction Finance Corporation (Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Co. and Rubber Reserve Co.), and the amount of profits therefrom. (If profits on such earnings are not segregated on the books, best estimate should be given);

7. A brief description of any bonus, pension trust, or other employee compensation plans in effect during the year under review, with comment as to how they are applicable to personnel for which compensation data are specifically supplied (officers, highly paid employees, etc.), and showing the dates that such plans were adopted. State whether approval has been obtained from the Bureau of Internal Revenue.

8. The latest taxable year examined by the Bureau of Internal Revenue and any significant changes made in taxable income or invested capital as a result of examinations made by the Bureau since 1 January 1942;

9. Any changes in excess profits tax credit claimed or to be claimed under section 721 or 722 of the Internal Revenue Code;

10. If royalties in excess of $25,000 were paid or accrued during the year under review, the names of significant payees and amounts of payments. Similarly, if the contractor received royalties in excess of $25,000, the names of licensees and amounts received from each;

11. Any revaluation of assets or recapitalization during the year under review;

12. Stockholders owning over 10 percent of voting stock and stockholdings of officers and key executives;

13. Financial interest in any subcontractor, supplier of material, or any concern from which construction plant or equipment has been acquired or rented during the year under review;

14. If the reporting entity is a joint venture, a certified copy of the joint-venture agreement;

15. Schedule showing name, address, and amount paid or accrued to each person, other than full-time employees, for obtaining or attempting to obtain contracts with any of the Departments named in the Act;

16. Any other matters with particular reference to those factors set forth in section (a) (4) (A) of the 1943 Act.

Instructions.—Since each of the subjects listed above requires development in some detail for purposes of renegotiation, in order that full value can be given to the contractor's contribution to the conduct of the war, the contractor should give careful consideration to the preparation of his statements relative thereto. While such statements may be amplified at a meeting with representatives of the War Contracts Price Adjustment Board, it is desirable that they be presented in writing before such meeting.

EXHIBIT I
INCOME STATEMENT

Budget Bureau No. 49-R200.
Approval expires 12-31-44.

For the fiscal year ended ....., 194...
(Segregated as to renegotiable and nonrenegotiable business as defined under the Renegotiation Act)

Exact name of contractor ..... Address .....

We keep our books on the Cash ☐ Accrual ☐ basis; we report our operations for Federal Income Tax Purposes on the Completed Contract ☐ Percentage of Completion ☐ basis; this Exhibit I is prepared on the Completed Contract ☐ Percentage of Completion ☐ basis.

	Subject to Renegotiation					Nonrenegotiable Business	Total Business
	Lump Sum and Unit Price Contracts	Cost-Plus-Fixed-Fee Contracts	Joint Ventures (proportionate share)	Uncompleted Contracts at End of Year	Total Subject to Renegotiation		
	(Column A)	(Column B)	(Column C)	(Column D)	(Column E)	(Column F)	(Column G)
1. Gross earnings	$	$	$	$	$	$	$
2. Job costs							
3. Gross profit							
4. Percent gross profit to job cost	%	%	%	%	%	%	%
5. General and administrative exp.							
6. Operating profit							
7. Percent operating profit to gross earnings	%	%	%	%	%	%	%
8. Other income							
9. Other deductions:							
(a) State taxes measured by income							
(b) Other							
10. Net contract earnings							
11. Rental income from owned equipment (net)	xxxxxx	xxxxxx	xxxxxx	xxxxxx			
12. Income from sales for war-end and other earnings (net)	xxxxxx	xxxxxx	xxxxxx	xxxxxx			
13. Net profit before provisions for Federal taxes on income and for extraordinary reserves	xxxxxx	xxxxxx	xxxxxx	xxxxxx			
14. Provisions for Federal taxes on income (gross)	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	
15. Postwar refund of excess profits tax (credit)	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	
16. Net profits before extraordinary reserves	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	
17. Prov. for extraordinary reserves	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	
18. Net income	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	xxxxxx	$

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SUPPORTING SCHEDULES TO EXHIBIT I

Furnish all schedules checked (x) in the following list

☐ Exhibit IA or the equivalent.

☐ Schedule of direct nonreimbursable costs applicable to CPFF contracts. List the items and amounts included in job costs on line 2 in column B.

☐ Schedule of salaries and all other compensation paid or accrued during the year under review and for each of the 5 preceding years:

(*a*) to all officers, partners, and sole proprietors.

(*b*) to other individuals and organizations receiving $10,000 or more in the year under review. (List five highest only.)

Show for each individual or organization: Name, title, or relationship and total compensation.

☐ SCHEDULE OF DEPRECIATION:

If any accelerated depreciation and/or amortization of emergency facilities is included, show in each case amount and basis of computation.

☐ SCHEDULE OF OTHER INCOME:

List items, grouped by major classifications, included in total amount shown on line 8, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF STATE TAXES MEASURED BY INCOME:

List by States amounts of taxes (including franchise taxes) measured by income included on line 9*a*, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF OTHER DEDUCTIONS:

List items, grouped by major classifications, included in total amount shown on line 9*b*, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF CONTRACTS TERMINATED AND IN PROCESS OF TERMINATION:

List the contracts included in exhibit I which were terminated during the year under review and in process of termination at its close, showing for each (*a*) contract number, (*b*) interested Department or service, (*c*) contract earnings, (*d*) related costs.

☐ Reconciliation of exhibit I with Federal Income Tax Return.

☐ Reconciliation of exhibit I with profit and loss statement prepared from contractors' books.

EXHIBIT IA

(Detail of Exhibit I)

Budget Bureau No. 49-R209.
Approval expires 12-31-44.

Name of contractor .....

Address of contractor .....

	Column A	Column B	Column C	Column D	Column E	Column F	Column G
JOB COSTS:							
1. Materials used, less discounts	$	$	$	$	$	$	$
2. LABOR:							
(a) Direct, including foremen							
(b) Supervisory							
Total	$	$	$	$	$	$	$
3. Subcontracts							
4. CONSTRUCTION PLANT AND EQUIPMENT							
(a) Rentals paid to others	$	$	$	$	$	$	$
(b) Rentals for use of own equipment, per books							
Total	$	$	$	$	$	$	$
5. MISCELLANEOUS JOB COSTS:							
(a) Bond premium, net		$	$	$	$	$	$
(b) Insurance, net	$						
(c) Maintenance and repair of equipment							
(d) Gas, oil, and grease							
(e) Field office expense							
(f) Depreciation (describe)							
(g) Other							
Total	$	$	$	$	$	$	$
6. Total job costs	$	$	$	$	$	$	$
Explain basis of allocation:							
GENERAL AND ADMINISTRATIVE EXPENSES:							
7. Salaries of officers, partners, or owners	$	$	$	$	$	$	$
8. Other salaries							
9. Selling and advertising expenses							
10. Depreciation (describe)							
11. Other operating expenses							
12. Total general and administrative expenses	$	$	$	$	$	$	$
Explain basis of allocation:							

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SUPPORTING SCHEDULES TO EXHIBIT IA

Furnish all schedules checked (x) in the following list

☐ Schedule of work subcontracted, by classifications assigned to the columns in exhibit IA, showing names and addresses of subcontractors, types and amount of work subcontracted, totals to agree with amounts on line 3 (subcontracts).

☐

Budget Bureau No. 40–R197.1.
Approval expires 12/31/44.

EXHIBIT IB

(Detail of Costs and Expenses)
By Contracts

Name of contractor .....

Address of contractor .....

	CONTRACT NUMBER								
JOB COSTS (exhibit I, line 2):									
1. Materials used, less discounts	$	$	$	$	$	$	$	$	$
2. Labor:									
(a) Direct, including foremen									
(b) Supervisory									
TOTAL									
3. Subcontracts									
4. Construction plant and equipment:									
(a) Rentals paid to others									
(b) Rentals for use of own equipment, per books									
TOTAL									
5. Miscellaneous job costs:									
(a) Bond premium, net									
(b) Insurance, net									
(c) Maintenance and repair of equipment									
(d) Gas, oil, and grease									
(e) Field office expense									
(f) Depreciation (describe)									
(g) Other									
TOTAL									
6. Total job costs									
GENERAL AND ADMIN. EXP. (exhibit I, line 5):									
7. Salaries of officers, partners, or owners									
8. Other salaries									
9. Selling and advertising expense									
10. Depreciation (describe)									
11. Other operating expenses									
12. TOTAL general and admin. expense	$	$	$	$	$	$	$	$	$

SUPPORTING SCHEDULES TO EXHIBIT IB

(Exhibit IB will generally be used only when renegotiation is conducted on a completed contract basis)

FURNISH ALL SCHEDULES CHECKED (X) IN THE FOLLOWING LIST

☐ Breakdown of gross contract earnings by contracts to support the amount shown in each column on line 1 of exhibit I. For amounts in columns A to D inclusive show prime and subcontract number, department or agency (if a subcontractor, also name and address of prime contractor), description and location of work, amount. For amount in column F show name and address of client, location and description of work, amount.

☐ Breakdown of job costs by contracts to support the amounts shown on line 2 of exhibit I in columns A, B, C, D and F. Show itemization of job costs as carried on your books, including such items as labor, material, subcontracts, equipment, rentals, etc. (Exhibit IB.)

☐ Schedule of work subcontracted, by contracts, showing names and addresses of subcontractors, types and amounts paid for work subcontracted.

☐ Schedule of direct nonreimbursable costs. List by contracts, the items and amounts included in job costs on line 2 in column B of exhibit I.

EXHIBIT II

Budget Bureau No. 40-R300.
Approval expires 12/31/44.

COMPARATIVE STATEMENT OF INCOME

(In even thousands of dollars)

To be submitted only if the information required for renegotiation purposes has not been previously submitted.

Name of Contractor ..... Address .....

	Years ended						
	19.....	19.....	19.....	19.....	19.....	19.....	19.....
1. Gross earnings:							
a. Lump sum and unit price work	$	$	$	$	$	$	$
b. Cost-plus-fixed-fee work							
c. Other earnings (describe)							
TOTAL							
2. Job costs							
3. Gross profit							
4. Percent of gross profit to job costs							
5. General and administrative expenses							
6. Operating profit							
7. Percent of operating profit to gross earnings							
8. Other income							
9. Other deductions							
10. Net profit before provisions for Federal taxes on income and for extraordinary reserves							
11. Provision for Federal taxes on income (gross)							
12. Post-war refund of excess profits tax (credit)							
13. Net profit before extraordinary reserves							
14. Provisions for extraordinary reserves							
15. Net income per books	$	$	$	$	$	$	$

U. S. GOVERNMENT PRINTING OFFICE 16—60126-1

725. Agreement Extending Time for Completion of Renegotiation.

..... 194..

It is hereby stipulated and agreed by and between the United States of America and .....
a ..... with principal business office at ..... (hereinafter referred to as the "Contractor"), as follows:

(1) Renegotiation pursuant to the Renegotiation Act between the War Contracts Price Adjustment Board or its duly authorized representative and the Contractor with respect to amounts received or accrued by the Contractor for the Contractor's fiscal year ended ..... was commenced ..... 194...

(2) In accordance with the provisions of clause (B) of the second sentence of subsection (c)(3) of the Renegotiation Act, the time within which a determination of the amount of excessive profits, if any, derived by the Contractor from contracts with the Departments and subcontracts for the Contractor's fiscal year ended ..... may be made by agreement or order is hereby extended to and including ..... 194....

.....
(Name of Contractor)

by .....
(Title)

If a corporation add
(Corporate Seal)

ATTEST:

.....
Secretary

UNITED STATES OF AMERICA

by .....

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

[The next page is 761.]

Section 4

FORMS RELATING TO AGREEMENTS AND UNILATERAL DETERMINATIONS

741. Agreement Forms.

741.1 Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ..... day of ..... 194.., by and between the UNITED STATES OF AMERICA (hereinafter referred to as "the Government") and .....
.....,
* a corporation organized and existing under the laws of the state of .....,
* co-partners, doing business under the firm name of .....,
* a sole proprietor, doing business under the name of .....,
having its principal office at .....
..... (hereinafter referred to as "the Contractor").

1. *Profits to be Eliminated.* As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ..... Dollars ($.....) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended ....., 194.., (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.†

2. *Warranty.* This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. *Tax Credit Under Section 3806 of the Internal Revenue Code.* The Contractor represents that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. *Terms of Payment.* The Contractor agrees to pay to the Government the sum of ..... Dollars ($.....), being the amount determined in Article 1 hereof to be eliminated, as follows:

---

* Delete inapplicable language.

† If the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 of the Renegotiation Regulations, the following sentence will be added:

"The amount of profits to be eliminated hereby has been determined by taking into consideration the application of the $500,000 or the $25,000 limitation set forth in subsection (c) (6) of the Renegotiation Act as interpreted by paragraph 348.3 of the Renegotiation Regulations."

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
..... ** All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment due under this agreement from and after the due date thereof, whether original or accelerated.

5. *Additional Profits to be Eliminated.* If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to .....
..... of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. *Covenant Against Contingent Fees.* The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. *Officials Not To Benefit.* No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. *Discharge of Liability.* This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. *Renegotiation Rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. *Execution of Agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in ..... counterparts as of the day and year above written.

(Corporate Seal if a Corporation)

By .....
(Title of Officer)

** If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, insert here: "to the extent of $..... and by check to the order of and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of $....."

ATTEST:

.....
Secretary

(To be used if executed by a corporation)

UNITED STATES OF AMERICA

By .....
(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Each exhibit attached hereto is to be initialed for identification by the persons signing on behalf of the Contractor.

A duly certified copy of the resolution of the Board of Directors of the Contractor, if a corporation, authorizing the execution and delivery of this agreement is to be attached hereto.

741.2 Variations in the Standard Form.

(1) *Forward Pricing.* When agreement cannot be reached upon specific price reductions, use may be made of the following clause:

"The Contractor agrees that so long as it shall have contracts and subcontracts which are by law subject to renegotiation, it will from time to time adjust its prices under such contracts and subcontracts to eliminate the accumulation of profits thereunder regarded by the Contractor as excessive. Within twenty days after the close of that quarter of the Contractor's current fiscal year in which the Contractor has received a fully executed counterpart of this agreement, the Contractor agrees to file with .....
.....
.....
a report setting forth the price reductions, if any, made during all then expired quarters of such current fiscal year applicable to its contracts and subcontracts subject to renegotiation. The Contractor further agrees to file a similar report within twenty days following each subsequent quarter of its current fiscal year setting forth its price reductions, if any, made during such quarter. Each such report may be in such general terms or in such detail as the Contractor deems necessary to an intelligent appraisal thereof, but shall set forth, if feasible, the unit prices before and after each such reduction, and shall set forth an estimate of the aggregate reduction effected thereby for such fiscal year under contracts and subcontracts subject to renegotiation; and shall include, if available, a summary profit and loss statement for the period covered by the report. It is understood and agreed that price reductions will be taken into consideration in any renegotiation which may hereafter be conducted with the Contractor with respect to its current fiscal year, but that, with respect to periods subsequent to the date of this agreement, the obligations of the Contractor under this article will not be deemed to be satisfied by refunds or retroactive price reductions.

"Failure on the part of the Contractor to comply fully with this article shall not constitute grounds for reopening this agreement or for setting aside the discharge provided for in Article 8 hereof."

(2) *Variations in Article 2 of the Standard Form.* When the renegotiation covers a parent and subsidiaries unless all parties sign the agreement the following clause should be added to Article 2 of the standard form of agreement by insertion after the first paragraph of Article 2:

"Exhibit B annexed hereto and made a part hereof contains a complete list, as represented by the Contractor, of its subsidiaries, all of which are consolidated with the Contractor for the purposes hereof, except such, if any, as may be expressly excluded from such consolidation, as indicated by proper notation on said Exhibit B. Also noted on Exhibit B is the

part, if any, of the profits to be eliminated which is allocated to each subsidiary so consolidated with the Contractor. The part unallocated to subsidiaries is allocated to the Contractor. Each such subsidiary to which is allocated any portion of the profits to be eliminated has duly executed said Exhibit B, thereby agreeing to pay to the Government such portion of the profits to be eliminated which has been allocated to it. All representations and warranties made herein by the Contractor shall be applicable to each such subsidiary and each such subsidiary shall be bound by all representations and warranties made with respect to it. Article 8 of this agreement shall likewise be applicable to each such subsidiary as though it were named herein as the Contractor."

Such exhibit may take the following form:

Exhibit B

List of, Allocation of Profits to be Eliminated among, and Agreement by, Subsidiaries of Contractor Included in the Renegotiation

1. The name, state of incorporation of all subsidiaries, and the dollar amount of profits to be eliminated, if any, which is allocable to each subsidiary, are as follows:

Name and State of Incorporation	Allocation of Profits to be Eliminated (Note 1)
.....	.....
.....	.....
.....	.....

Note 1: If no amount of excessive profits is allocated to a particular subsidiary, insert the word "none" opposite the name of such subsidiary.

2. Each of the undersigned subsidiaries hereby approves and adopts the agreement of which this Exhibit B is a part and agrees to pay to the Government the amount of profits to be eliminated which is allocated to it as hereinabove set forth, and any additional profits eliminated pursuant to the provisions of Article 5 of this agreement resulting from a refund to or the reduction in a liability of such subsidiary, provided, however, that payments by the Contractor pursuant to such agreement shall be applied ratably in satisfaction of the liability of the Contractor and the liability of each of the undersigned. Upon the failure of the Contractor to make when due, either as provided herein or by acceleration, any payment provided by this agreement each of the undersigned subsidiaries agrees to pay to the Government the amount of the profits to be eliminated agreed to be paid by it, to the extent not theretofore paid by the Contractor, together with interest thereon after default as provided in Article 4 of this agreement.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the day and year of execution of the agreement of which this Exhibit B is a part.

Seal

.....

By.....
(Title of Officer)

ATTEST:

.....
Secretary

Seal

.....

By.....
(Title of Officer)

ATTEST:

.....
Secretary

(3) *Variations in Article 3 of the Standard Form.*

(a) If the contractor has not filed his Federal income or income and excess profits tax returns, or has filed the return but has not included in income as reported therein the profits to be eliminated, the following provisions should be used in lieu of the provisions of Article 3 as contained in the standard form of agreement:

> "3. Tax Credit Under Section 3806 of the Internal Revenue Code: The amount of profits agreed in Article 1 hereof to be eliminated has not been included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and, accordingly no tax credit under Section 3806 of the Internal Revenue Code is allowed against the amount of such profits to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of profits agreed in Article 1 hereof to be eliminated, or any part thereof, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(b) In some instances, a contractor will have included in income as reported in his tax returns less than all of the profits to be eliminated. In such a case Article 3 should be modified to read as follows:

> "3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor represents that of the profits agreed in Article 1 hereof to be eliminated $..... were included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of the profits agreed in Article 1 hereof to be eliminated and which were excluded from income in the Contractor's income tax return (or income and excess profits tax returns) for said fiscal year, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(c) In the case of a partnership, the tax credit applicable against the amount of the profits to be eliminated is the aggregate of the credits to which each of the partners is entitled. Accordingly, in such a case Article 3 may be modified to read as follows:

> "3. Tax Credit Under Section 3806 of the Internal Revenue Code. Each of the partners comprising the Contractor represents that his proportionate share of the profits, the amount of which is agreed in Article 1 hereof to be eliminated, was included in his income for his taxable year in which said fiscal year ended in computing his total tax in his Federal income tax return for said taxable year. Each of such partners has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which his taxes for such taxable year under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The aggregate of the amounts, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated."

(4) *Anti-Discrimination Clause.* Whenever a renegotiation agreement executed under the Act expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause then the agreement shall include the following provision:

"Anti-discrimination.—(a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

"(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work, to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract."

(5) *Variations in Article 4 of the Standard Form.*

(a) If the profits to be eliminated are to be paid in installments, and the amount of the tax credit has not been ascertained, Article 4 may be drafted to read as follows:

"4. Terms of Payments. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3, as follows:

(a) $....., less the pro rata portion of the tax credit applicable thereto, within ten days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later; and

(b) $....., less the pro rata portion of the tax credit applicable thereto, on or before ..... or the due date of the first scheduled payment, whichever shall be later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(b) If the amount of the tax credit has been ascertained before the agreement is drawn, Article 4 may be drafted to read as follows:

"4. Terms of Payment. The Contractor agrees to pay to the Government the sum of ..... ($.....), being the difference between the amount agreed in Article 1 hereof to be eliminated and the amount of the tax credit referred to in Article 3 which has been determined to be applicable thereto, as follows:

$..... within ten days after the Contractor shall have received a fully executed counterpart of this agreement, and

$..... on or before .....; and

$..... on or before .....

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(6) *Clause to Be Used in Connection with Renegotiation on a Completed Contract Basis in Certain Cases.* Whenever renegotiation is conducted on a completed contract basis pursuant to the request of the contractor in the form therefor which is set forth in paragraph 723, the following clause will be inserted in the renegotiation agreement:

"Renegotiation of Construction Contracts and Subcontracts on Completed Contract Basis. At the request of the contractor and with the consent of the renegotiating agency, the renegotiation concluded by this agreement was conducted on a completed contract basis with respect to the construction contracts and subcontracts of the contractor completed within said fiscal year. A copy of said request dated ..... is attached hereto as Exhibit ....., incorporated herein by reference as though set forth herein, and the contractor hereby agrees to be bound by all of the undertakings and conditions set forth in said request."

(7) *Clause Relating to Waiver of CPFF Claims.* When appropriate, the following clause may be used.

"There have been allowed as costs against renegotiable business in the renegotiation for said fiscal year amounts for which claims for reimbursement under cost-plus-fixed-fee contracts have been made and disallowed by the Government. As part of Exhibit A attached hereto, there is set forth a description of such claims for reimbursement, stating the amount of each claim and the amount thereof which has been allowed as a cost against renegotiable business for the purposes of this agreement. The contractor hereby waives and releases such claims for reimbursement and all rights it may now or hereafter have for the collection or reimbursement of said disallowed items to the extent that amounts under such claims have been allowed as costs against renegotiable business."

In addition, if such clause is used, the claims and amounts being waived should be shown as a part of Exhibit A.

741.3 Contents of Exhibit "A" to the Standard Form of Agreement. Exhibit "A" referred to in the Standard Form of Agreement shall contain, as a minimum, the following financial data and information:

(1) The amount of net sales under fixed price contracts in the aggregate and segregated as between renegotiable and non-renegotiable business.

(2) The net profit on each such amount of fixed price business before Federal taxes on income.

(3) The aggregate amount of billings under cost-plus-fixed-fee contracts subject to renegotiation (i. e., costs plus gross fees).

(4) The net fees earned under renegotiable cost-plus-fixed-fee contracts before Federal taxes on income.

(5) The amount of adjustment in the profits to be eliminated on account of taxes other than Federal taxes measured by income.

(6) The amount of profits to be eliminated shown separately as to fixed price and cost-plus-fixed-fee business. If any part of the profits to be eliminated were derived from prime contracts with RFC subsidiaries, such part of such profits shall be indicated.

The form of the exhibit and the manner in which such financial data and information shall be shown shall be within the discretion of the Department which has conducted the renegotiation. In the discretion of such Department, any additional financial data or information may be included in Exhibit "A." (See paragraph 741.2 subdivision (7).)

741.4 **Contents of Exhibit "B" to the Standard Form of Agreement.** See paragraph 741.2 subdivision (2).

741.5 **Contents of Exhibit "C" to the Standard Form of Agreement.** See paragraph 505.

Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Mr. Joseph M. Dodge, Chairman
(War Department)
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73173

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Comdr. A. G. Rydstrom
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 25, D. C.

Tel. Executive 3340
Ext. 606 or 607

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C.

Tel. Republic 7500
Ext. 71783

791.3 **Office of General Counsel.**

War Contracts Price Adjustment Board
Attention: Mr. W. James MacIntosh, General Counsel
Room 3D 630, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 72191

791.4 **Assignment Office.**

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C.

Tel. Republic 6700
Ext. 73678

791.5 **Pentagon Office.**

Room 3E 592, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73636

792. **Departmental Price Adjustment Boards.**

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

War Department Power Procurement Officer
Attention: Major George P. Steinmetz, Deputy,
Utilities Price Adjustment Section
Room 5004, New War Dept. Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79994 or 76210

793.2 Field Offices of Price Adjustment Sections.

(1) *Army Air Forces:*

39 South La Salle Street, Chicago 3, Illinois,
Tel. Randolph 9720.

Enquirer Building, 617 Vine Street, Cincinnati, Ohio,
Tel. Cherry 8320.

4614 Prospect Avenue, Cleveland 3, Ohio,
Tel. Endicott 7200.

8505 West Warren Avenue, Detroit 32, Michigan,
Tel. Hogarth 8730.

3636 Beverly Boulevard, Los Angeles 54, California,
Tel. Drexel 7081.

67 Broad Street, New York 4, New York,
Tel. Whitehall 4-1600.

420 West Douglas Avenue, Wichita 1, Kansas,
Tel. Wichita 5-4621.

(2) *Corps of Engineers:*

50 Whitehall Street, Atlanta 2, Georgia,
Tel. Jackson 6180.

101 East Fayette Street, Baltimore 2, Maryland,
Tel. Plaza 8060.

75 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 8100.

20 North Wacker Drive, Chicago 6, Illinois
Tel. Randolph 1311.

1120 Huntington Bank Building, Columbus 16, Ohio,
Tel. Main 6481.

Santa Fe Building, 1114 Commerce Street,
Dallas 2, Texas,
Tel. LD 930.

270 Broadway, New York 7, New York,
Tel. Barclay 7-1616.

Farm Credit Building, 19th and Douglas,
Omaha 1, Nebraska,
Tel. Webster 5966.

351 California Street, San Francisco, California,
Tel. Garfield 6900.

(3) *Ordnance Department:*

700 Frank Nelson Building, Birmingham 1, Alabama,
Tel. Birmingham 4-7511.

140 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 9800.

38 South Dearborn Street, Chicago 3, Illinois,
Tel. Franklin 4900.

Big Four Building, Cincinnati 1, Ohio,
Tel. Cherry 3800.

1006 Terminal Tower Building, Cleveland 13, Ohio,
Tel. Main 0670.

1832 National Bank Building, Detroit 32, Michigan,
Tel. Randolph 9360.

Room 1815—80 Broadway, New York 5, New York,
Tel. Hanover 2-7300.

150 South Broad Street, Philadelphia 2, Pennsylvania,
Tel. Locust 4020.

1202 Chamber of Commerce Building, Pittsburgh 9, Pennsylvania,
Tel. Grant 5966.

1238 Mercantile Building, Rochester 4, New York.
Tel. Stone 3203.

3663 Lindell Boulevard, St. Louis 8, Missouri,
Tel. Jefferson 7380.

100 McAllister Street, San Francisco 1, California.
Tel. Underhill 3306.

95 State Street, Springfield 3, Massachusetts.
Tel. 7-0211

(4) *The Quartermaster General:*

1 State Street, Boston 9, Massachusetts,
Tel. Lafayette 3712.

333 North Michigan Avenue, Chicago 1, Illinois.
Tel. Franklin 5910.

521 Fifth Avenue, New York 17, New York,
Tel. Murray Hill 2-2622.

520 Kohl Building, Montgomery and California Streets, San Francisco 4, California,
Tel. Exbrook 7467.

16th Floor Woodside Building, Greenville, South Carolina,
Tel. 7140.

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building,
Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker
Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 6, D. C.
Tel. Republic 7400.
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
21st Floor
100 West Monroe Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61468.

(2) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(3) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 5-3851.

(4) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 916, 610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 3860
Ext. 372-3.

(5) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Tucker 1351

794.3 **Price Revision Division.**

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. **Related Offices.**

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. **War Department Patent Royalty Adjustment Offices.**

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Chief, Legal Division
Office of the Chief of Transportation
Room 3A 724, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3556

Chief, Contracts and Claims Branch
Office of the Chief of Engineers
Room 3213, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 78253

Chief, Patent Section, Legal Branch
Office of the Chief of Ordnance
Room 4E 330, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2748

Patents and Inventions Counsel, Legal Division
Office of the Chief Signal Officer
Room 4D 331, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3702

Chief, Patent Section, Legal Branch
Office of the Chief of the Chemical Warfare Service
Room 1007, T-7
Gravelly Point
Virginia

Tel. Republic 6700
Ext. 2826

Chief, Patent Section, Legal Branch
Office of the Quartermaster General
Room 2442, Tempo B
Washington 25, D. C.

Tel. Republic 6700
Ext. 4294

The Patent Representative
Office of the Surgeon General
Room 419, Maritime Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79369

797. **Reconstruction Finance Corporation Price Adjustment Sections.**

797.1 **Headquarters.**

Reconstruction Finance Corporation
Price Adjustment Board
Lafayette Building,
811 Vermont Avenue, N. W.
Washington 25, D. C.
Tel. Executive 3111
Ext. 8 or 48

797.2 **Field Offices of Price Adjustment Sections.**

Healey Building, Atlanta 3, Georgia,
Tel. Main 5612

Comer Building, Birmingham 3, Alabama,
Tel. Birmingham 4-2661

40 Broad Street, Boston 9, Massachusetts,
Tel. Capitol 4070

Wilson Building, 109 West Third Street, Charlotte 1, N. C.,
Tel. Charlotte 3-7161

208 S. LaSalle Street, Chicago 4, Illinois,
Tel. State 0800

Federal Reserve Bank Building, Cleveland 1, Ohio,
Tel. Main 8515
Night, Main 8518

Cotton Exchange Building, Dallas 1, Texas,
Tel. LD 171 or
Riverside 6751

Boston Building, Denver 2, Colorado,
Tel. Alpine 0415

607 Shelby Street, Detroit 26, Michigan,
Tel. Cherry 8300

P. O. Box 177, Power Block, Helena, Montana,
Tel. Helena 481

Rusk Building, 723 Main Street, Houston 2, Texas,
Tel. Charter 4-6711

Western Union Building, Jacksonville 2, Florida,
Tel. Jacksonville 5-1650

Federal Reserve Bank Building, Kansas City 6, Missouri,
Tel. Victor 3113

Pyramid Building, Little Rock, Arkansas,
Tel. Little Rock 4-0254

Pacific Mutual Building, Los Angeles 14, California,
Tel. Michigan 6321

Lincoln Bank Building, 421 W. Market Street,
Louisville 2, Kentucky,
Tel. Wabash 6771

McKnight Building, Minneapolis 1, Minnesota,
Tel. Geneva 8601

Nashville Trust Company Building, Union Street,
Nashville 3, Tennessee,
Tel. LD 48 or 5-2182

Union Building, 837 Gravier Street, New Orleans 12,
Louisiana,
Tel. Canal 2701

Federal Reserve Bank Bldg., 33 Liberty Street, New
York 5, N. Y.,
Tel. Rector 2-8100

Cotton Exchange Building, Oklahoma City 2, Oklahoma,
Tel. LD 647 or 2-8541

Woodmen of the World Bldg., Omaha 2, Nebraska,
Tel. Jackson 8200

1528 Walnut Street, Philadelphia 2, Pennsylvania,
Tel. Kingsley 1500

Pittock Block, Portland 5, Oregon,
Tel. Atwater 6401

Richmond Trust Building, 7th and Main Streets, Rich-
mond 19, Virginia,
Tel. Richmond 3-6741

Landreth Building, 320 N. Fourth Street, St. Louis 2,
Missouri,
Tel. Garfield 3750

Dooly Building, Salt Lake City 1, Utah,
Tel. Salt Lake City 5-7493

Alamo National Building, San Antonio 5, Texas,
Tel. Cathedral 1461

200 Bush Street, San Francisco 4, California,
Tel. Exbrook 6206

Dexter Horton Building, Seattle 4, Washington,
Tel. Main 1080

Columbia Building, Spokane 8, Washington,
Tel. Main 5111

798. War Department Power Procurement Officer Price Adjustment Sections.

798.1 Headquarters.

Utilities Price Adjustment Section,
Office, Chief of Engineers,
Attention: Major George P. Steinmetz, Chief,
5004 New War Department Building,
Washington 25, D. C.

Tel. Republic 6700
Ext. 79994 or 76210

798.2 Field Offices of Price Adjustment Sections.

Commanding General, First Service Command,
Office, Service Command Engineer,
Attention: Mr. W. K. Lewellen,
808 Commonwealth Avenue,
Boston 15, Massachusetts.

Tel. Beacon 1300
Ext. 430

Commanding General, Second Service Command,
Office, Service Command Engineer,
Attention: Major N. H. Davidson,
270 Broadway,
New York 7, New York.

Tel. Barclay 7-1616

Commanding General, Third Service Command,
Office, Service Command Engineer,
Attention: Mr. H. C. Fleming,
101 East Fayette Street,
Baltimore 2, Maryland.

Tel. Plaza 8060

Commanding General, Fourth Service Command,
Office, Service Command Engineer,
Attention: Major R. B. Lapsley,
P. O. Box 4114,
Atlanta, Georgia.

Tel. Jackson 6180
Ext. 85

Commanding General, Fifth Service Command,
Office, Service Command Engineer,
Attention: Major L. F. Dabe,
Building 62, Fort Hayes,
Columbus 18, Ohio.

Tel. Columbus 2171
Ext. 635

Commanding General, Sixth Service Command,
Office, Service Command Engineer,
Attention: Capt. V. A. Thieman,
20 No. Wacker Drive,
Chicago, Illinois.

Tel. Randolph 1311

Commanding General, Seventh Service Command,
Office, Service Command Engineer,
Attention: Major R. H. Bradford,
Federal Building, 15th & Dodge Streets,
Omaha, Nebraska.

Tel. Jackson 7900
Ext. 233

Commanding General, Eighth Service Command,
Office, Service Command Engineer,
Attention: Major D. W. Reeves,
Santa Fe Building,
Dallas 2, Texas.

Tel. LD 930
Ext. 771

Commanding General, Ninth Service Command,
Office, Service Command Engineer,
Attention: Major W. C. Sadler,
Fort Douglas, Utah.

Tel. Fort Douglas 5-6611

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CHAPTER VIII

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- 801.7...Sec. 403 (g)
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(*e*) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation, the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the errors alleged.

(*f*) A prayer, setting forth relief sought by the petitioner.

(*g*) The signature of the petitioner or that of hs counsel. (See Rule 4.)

(*h*) A verification by the petitioner in accordance with the applicable provision of subsection (h) of Rule 6.

(*i*) A copy of the order of the Board or of the Secretary, as the case may be, determining the amount of excessive profits, which order forms the basis for the initiation of the proceeding, shall be appended to the petition. If a statement has been furnished to the petitioner by the Board or the Secretary setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

III. Any Claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under Rule 14, or in an amendment thereto filed under Rule 17 at or before the time of the hearing.

IV. With respect to the matter covered by Rule 60, attention is directed to section 403 (e) (1) of the Renegotiation Act.

807. **Legal Rate of Interest in Absence of Agreement—District of Columbia.** "The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: Provided, That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum." (Mar. 3, 1901, 31 Stat. 1377, ch. 854, 1178; July 1, 1902, 32 Stat. 610, ch. 1352.) (See D. C. Code Sec. 28-2701.)

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Any other perishable food of a similar nature whch may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Vegetable seeds	Not processed beyond the form or state at which they may be used as seeds
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap sold by dealers or brokers;

[**Comment**: The exemption of iron scrap and steel scrap as a standard commercial article applies only to dealers and brokers in iron scrap and steel scrap and is not to be construed as affecting, in any way, users of iron scrap or steel scrap, in particular, manufacturers of iron or steel or processors making iron or steel products who may produce and sell iron scrap or steel scrap as a by-product in the course of their operation. Neither does the exemption cover dealers in secondhand iron and steel machinery, equipment or facilities which are sold for re-use in any way other than as scrap.]

(b) Refined sugar (cane or beet);

(c) Textile bags (made of burlap or cotton);

(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPPLEMENT RR-3

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS
for fiscal years ending after June 30, 1943

4 August 1944

SUMMARY OF IMPORTANT AMENDMENTS

1. Construction Contracts Awarded as a Result of Competitive Bidding. Revision of paragraph 346.2 relating to interpretation and application of mandatory exemption.

2. Subcontracts under Contracts and Subcontracts Mandatorily Exempted. Revision of paragraph 347.2 relating to the interpretation and application of the exemption of subcontracts under contracts and subcontracts mandatorily exempted.

3. No Reduction by Refund Below Exemption. Revision of "floor" provisions of paragraph 348.3 to require application after adjustment for state income taxes and specifying method of application in cases of "common control".

4. Permissive Exemption of Construction Contracts and Subcontracts When Effective Competition Is Likely to Exist. Revision of paragraph 355.3 relating to the application of the permissive exemption to construction contracts and subcontracts.

5. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits. Revision of paragraph 356.2 relating to the application of this permissive exemption.

6. Waiver of Claims under CPFF Contracts. Addition of provisions relating to claims under CPFF contracts when the amounts of the items disallowed under such contracts are allowed as costs against renegotiable business (see paragraphs 407.3 (1), 506.6 and 741.2 (7)).

7. Consolidated Renegotiation. Addition of form and instructions for use in case of consolidated renegotiation (see paragraphs 502.13 and 741.2 (2)).

8. Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation. See forms added at paragraph 724.

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

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FILING INSTRUCTIONS

The pages sent with this memorandum are to be included *immediately* in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
201—202	201—202	Change in Table of Contents for Chapter II.
223—224	223—224	(1) Revision of paragraph 223.1 relating to use of forms appearing in paragraphs 702.1 and 702.3. (2) Addition of paragraph 223.3 relating to use of form appearing in paragraph 702.4. (3) Revision of paragraph 224 to reflect addition of form for Construction Contractors, Architects and Engineers Information and Work Sheet for Renegotiation at paragraph 724.
241	241	(1) Revision of paragraph 241 relating to commencement of renegotiation to require the giving of formal notice prior to holding a conference to discuss the amount of the refund. (2) Revision of paragraph 242 to reflect addition of form for Construction Contractors, Architects and Engineers Information and Work Sheet for Renegotiation at paragraph 724.
303—304	303—304	Changes in Table of Contents for Chapter III.
315—316	315—316	(1) Addition of reference at end of paragraph 311 (2). (2) Revision of paragraph 311 (3) relating to the form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation.
347B—348	347B—348	(1) Revision of paragraph 346.2 relating to interpretation and application of exemption of construction contracts awarded as a result of competitive bidding. (2) Revision of paragraph 347.2 relating to the interpretation and application of exemption to subcontracts under exempt contracts and subcontracts. (3) Addition to paragraph 348.2 (2) of provision that in computation of aggregate receipts and accruals within the statutory minimum, the same will be computed without the elimination of inter-company sales. (4) Revision of paragraph 348.3 relating to reduction of refund below exemption.
353—355	353—356	(1) Revision of paragraph 355.3 relating to application of exemption to construction contracts and subcontracts when effective competition is likely to exist. (2) Revision of paragraph 356.2 relating to exemption of subcontracts as to which it is not administratively feasible to determine and segregate profits. (3) The word "quintuplicate" in paragraph 358 is changed to "triplicate".
361—362	361—362	Addition of references in paragraphs 362 and 363.
383B—384	383B—384	Addition to paragraph 381.4 of subdivision (5) relating to costs previously allowed in renegotiation.
385—386	385—386	Revision of paragraph 382.6 (2) (c) relating to pension, annuity, stock bonus and profit sharing plans.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
387D—387E	387D—387E	Addition of reference at end of paragraph 389.1.
415—416	415—416	Addition of reference at end of paragraph 407.3 (1)
501—502	501—502	Changes in Table of Contents for Chapter V.
511—518	511—517B	(1) Addition to paragraph 502.2, relating to Article 1 of Standard Form of Agreement, of requirement of statement as to application of "floor" provisions of paragraph 348.3. (2) Addition of subdivision (8) to paragraph 502.5 containing a reference to the provisions for the payment of interest in case of default. (3) Revision of paragraph 502.12 (2) relating to the form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation. (4) Addition of new subdivision (5) to paragraph 502.12 of provision requiring that the renegotiation agreement must be accompanied or supported by proper evidence of authority where the authority of the person signing the agreement is based upon a written instrument or court order or provision of law. (5) Addition of paragraph 502.13 relating to the form and execution of agreements in cases of consolidated renegotiation. (6) Addition of new paragraph 506.6 relating to waivers of claims under Cost-Plus-Fixed-Fee Contracts.
701—703	701—703	Changes in Table of Contents for Chapter VII.
727—728	727—728	(1) Addition of footnote to form appearing at paragraph 702.2. (2) Change in title of form appearing at paragraph 702.3.
731—732	731—732	Changes the word "and" to "or" in fourth line from bottom of page 731 and changes the word "or" to "and" in third line from bottom of page 731.
759B—760	759B—759N	Addition in paragraph 724 of form for Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.
765—766 (6 pages)	765—766 (8 pages)	(1) Addition of footnote to Article 1 in Standard Form of Agreement (paragraph 741.1) requiring addition of statement in cases where amount of refund has been limited by the "floor" provisions of paragraph 348.3. (2) Revision of paragraph 741.2 (2) relating to variations in Article 2 of the Standard Form of Agreement when the renegotiation covers a parent and subsidiaries. (3) Addition to paragraph 741.2 of a new subdivision (7) containing a clause relating to the waiver of CPFF claims and instructions for its use. (4) Addition of reference to paragraph 741.2 (7) at end of paragraph 741.3.
791—792	791—792	Change in postal zone for address in paragraph 791.1.
795—797	795—797D	(1) Change in address for War Department Power Procurement Officer (paragraph 793.1) and changes in telephone numbers of the Services and Sales Renegotiation Sections of the Navy Department (paragraphs 794.2 (4), (5)). (2) Addition of paragraph 797 containing addresses of RFC Price Adjustment Sections.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(3) Addition of paragraph 798 containing addresses of War Department Power Procurement Officer Price Adjustment Sections.
801—802	801—802	Change in Table of Contents for Chapter VIII.
839	839	Addition of paragraph 807 containing the statute bearing on the legal rate of interest in the absence of agreement in the District of Columbia.
849—850	849—850	Addition of vegetable seeds to the exemption list of agricultural commodities in paragraph 844.

★When you have filed these pages, place this instruction letter at the back of your binder.

CHAPTER II

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on or before the date specified in the 1943 Act, such contractor may file such report containing such information as he can feasibly supply, which in all cases shall include at least the contractor's balance sheet, profit and loss statement and surplus statement for his latest completed fiscal year and shall state in such report that the information not contained therein or such other information as the Department or such Branch may require, will be furnished within such period as the Department or such Branch may designate. In any such case the filing of such a statement on or before the date specified in the Act and its acceptance by such Department or such Branch shall constitute compliance by the contractor with the provisions of subsection (c) (5) (A).

222.2 **Time for Filing.** The mandatory financial statements hereby prescribed shall be filed on or before the first day of the fourth month following the close of the fiscal year of the contractor (or if such fiscal year had been closed on February 25, 1944, on or before the first day of June, 1944), whether or not any demand has been made by the War Contracts Board or by any person on its behalf.

222.3 **Place for Filing.** Except as stated herein, the mandatory financial statements hereby prescribed shall be filed in duplicate with the War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C. Where the contractor has received a "Letter of Preliminary Inquiry" (see paragraph 223) and a "Standard Form of Contractor's Report" from a renegotiating Agency, the mandatory financial statements hereby prescribed shall be filed in duplicate with that Agency. The renegotiating Agency will forward one copy to the War Contracts Board within sixty days after receipt of the Report by the Renegotiating Agency.

222.4 **Availability of Forms.** Copies of the forms above mentioned may be obtained upon request to the Assignments and Statistics Branch or to any of the Price Adjustment Boards or Sections of the several Departments authorized to conduct renegotiation proceedings.

222.5 **Effect of Filing Mandatory Financial Statements.** The filing of a mandatory financial statement in accordance with the provisions of this paragraph 222 will not relieve any contractor or subcontractor of the duty to furnish such other information, records or data which are determined by the War Contracts Board or its representatives to be necessary to carry out its responsibilities under the Act.

222.6 **Filing of Mandatory Financial Statements by Parent and Subsidiary Corporations on a Consolidated Basis.** Parent and subsidiary corporations which constitute an "affiliated group" as defined in subsection (d) of Section 141 of the Internal Revenue Code may satisfy the requirements for filing of mandatory financial statements under the first sentence of subsection (c) (5) (A) of the Renegotiation Act of 1943 by filing a "Standard Form of Contractor's Report" on a consolidated basis. When such a consolidated "Standard Form of Contractor's Report" is filed there shall also be filed a "Standard Form of Contractor's Report" for each subsidiary corporation (except as noted below) but any such subsidiary corporation report may be completed by writing thereon a statement that a consolidated report has

been filed by the parent company. Where any such subsidiary corporation has not received or accrued during the applicable period any amount whatever under renegotiable contracts with the Departments and subcontracts (i. e., contracts or subcontracts not exempt from renegotiation by contractual provision pursuant to subsection (i) or contracts or subcontracts which are not exempted under subsection (i) of the Renegotiation Act of 1943), no report need be filed by it.

223. Letter of Preliminary Inquiry.

223.1 Unassigned Contractors. The War Contracts Board, through the Assignments and Statistics Branch, may send to contractors and subcontractors who are identified by it as probably subject to renegotiation proceedings (except those who have been previously assigned) a "Letter of Preliminary Inquiry" (see paragraphs 702.1 and 702.3). Since the form appearing at paragraph 702.1 allows a period of thirty days for answering, it will not be used within 30 days of the time for filing prescribed by the 1943 Act. The "Letter of Preliminary Inquiry," sent by the Assignments and Statistics Branch, will be to determine whether or not the contractor should be assigned for renegotiation and to what Department or Service, if any, such assignment should be made. The filing of the "Standard Form of Contractor's Report" will constitute compliance with the requirement for mandatory filing under paragraph 222, if filed within the time prescribed by the 1943 Act.

223.2 Assigned Contractors. The Departments and Services may send to contractors who have been assigned to them for 1943 renegotiation the "Letter of Preliminary Inquiry" (see paragraph 702.2) and the appropriate Standard Form of Contractor's Report. In such cases, the filing of the Standard Form of Contractor's Report will constitute compliance with the requirements of mandatory filing under paragraph 222 if filed within the time prescribed by the 1943 Act, and, with respect to assigned cases, will enable a determination to be made as to whether further renegotiation proceedings will be necessary.

223.3 Follow-up. The form appearing at paragraph 702.4 will be used with respect to contractors who have not made response to a "Letter of Preliminary Inquiry" within the time prescribed for filing under subsection (c)(5)(A) of the 1943 Act. Such follow-up letters will be sent by the office which sent the "Letter of Preliminary Inquiry" with appropriate variation in signature.

224. Contractor's Information and Work Sheet for Renegotiation. The War Contracts Board, through the Department or Service to which any contractor or subcontractor is assigned, may send to such contractor or subcontractor a form designed to assist him in preparing information when it is contemplated that formal renegotiation proceedings will be carried to conclusion (see paragraph 242). The form prepared for the use of supply contractors is the "Contractor's Information and Work Sheet for Renegotiation" (see paragraph 722) and that for construction contractors, architects and engineers is the "Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation" (see paragraph 724).

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Section 4

CONDUCT OF RENEGOTIATION

240. Scope of Section. This section includes instructions on the conduct of renegotiation.

241. Commencement of Renegotiation. Renegotiation proceedings are commenced by the mailing, by registered mail, of reasonable notice of the time and place of a conference to be held with respect to the renegotiation. (See paragraph 801.3.) A form which may be used for such purpose is set forth in paragraph 721. Such notice shall be given in all cases of renegotiations with respect to fiscal years ending after June 30, 1943, and in the absence of unusual circumstances such notice shall be given prior to the time a conference is held for the purpose of discussing the refund. In any case where a conference is unnecessary by reason of the progress which has been made in renegotiation prior to the sending out of the formal notice, the notice should be sent, but the conference can be waived by agreement with the contractor.

242. Data Presented by Contractor. The contractor should be prepared to present all the factual data pertinent to the consideration of his case. In this connection, reference is made to the information required in the mandatory financial statement (paragraph 220 and following) and to other chapters hereof. Suitable forms, designed to help contractors in assembling data of significance in renegotiation, are set out at paragraphs 722 and 724. These forms are not mandatory, but indicate the type of information required of a contractor to supplement what he supplied on the mandatory financial statement (see paragraph 701). Manufacturers and supply contractors should use the "Contractor's Information and Work Sheet for Renegotiation" (see paragraph 722), and construction contractors, architects and engineers should use the "Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation" (see paragraph 724). (See also paragraph 224.)

243. Process of Renegotiation. The general principles applicable to the conduct of renegotiation and the process of arriving at a renegotiation determination are discussed in paragraph 402.3.

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342.1...Statutory Provision
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344.4...Profits from Increment in Value of Excess Inventories

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348...Annual Receipts Under Statutory Minimum
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354...Contracts and Subcontracts for Standard Commercial Articles
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361...Statutory Provision
362...Commencement of Renegotiation Proceedings
363...Completion of Renegotiation Proceedings

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370...Scope of Section
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Section 8

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381...Statutory Provisions and General Regulations
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381.2..."Recomputation" of Amortization Deduction Prior to Renegotiation—Carry-overs and Carry-backs
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381.4...Profit, Cost Allocation and Allowance—General
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383...Amortization and Depreciation
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from performance of the single undertaking may be allocated equally to each vessel. Such contracts are subject to renegotiation unless otherwise exempt, but their provisions necessitate special treatment with respect to which the Department with which the contracts are made should be consulted.

308. Treatment of Other Contract Claims. If a contractor has claims other than of the kind discussed in paragraphs 306 and 307 which may affect his profits from renegotiable business for the period under review, such claims should be revealed in the financial or other data upon which the renegotiation is based.

309. Renegotiation of Parent and Subsidiaries on Consolidated Basis.

309.1 When Authorized. Renegotiation of parent and subsidiary companies may, in the discretion of the Department conducting the renegotiation, be conducted on a consolidated basis whether or not the parent and subsidiaries constitute an "affiliated group" as defined in subsection (d) of Section 141 of the Internal Revenue Code.

309.2 Definition of "Affiliated Group". Section 141 (d) of the Internal Revenue Code is as follows:

> "(d) Definition of 'Affiliated Group'. As used in this section, an 'affiliated group' means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—
>
> "(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and
>
> "(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.
>
> As used in this subsection, the term 'stock' does not include nonvoting stock which is limited and preferred as to dividends."

310. Consolidated Basis in Cases of Common Ownership.

310.1 When Authorized. If two or more business enterprises are under common control as a result of common ownership, rather than as a result of parent-subsidiary relationship, renegotiation on a consolidated basis may be appropriate if

(a) such consolidation is reasonably necessary for the protection of the interests of the Government. This is especially likely if one or more of such enterprises is a subcontractor of another of the enterprises commonly owned; and

(b) the extent of the common ownership is such that consolidation for renegotiation purposes is not, in the opinion of the Department conducting the renegotiation, inequitable to minority interests in one or more of the enterprises.

It is not essential that the interests of the common owners be identical in extent or nature in each of the enterprises commonly owned.

311. Allocation of Excessive Profits in Cases of Consolidated Renegotiation.

(1) In renegotiation on a consolidated basis, careful scrutiny will be given to the methods employed in segregating costs as well as income as between the corporations or enterprises included in the consolidated renegotiation, particularly where the type of business conducted by one is different and distinct from the type of business conducted by the others in the consolidated group.

(2) Excessive profits must be allocated among the corporations or enterprises included in the renegotiation, and the renegotiation agreement must disclose the allocation. If excessive profits have been realized and the renegotiation agreement merely imposes liability generally on the entire consolidated group for the profits found to be excessive, without fixing the separate liability, then the members of the group may not be allowed a deduction from their income for Federal tax purposes for the amount of excessive profits to be eliminated under the agreement, or a tax credit under Section 3806 of the Internal Revenue Code. The excessive profits must be so allocated even though some or all of the members of the consolidated group participate in filing a consolidated Federal tax return. (See paragraph 741.2(2).)

(3) The form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation is described in paragraph 502.13.

(4) To make such allocations of the excessive profits, a review of the unconsolidated financial statements of each member of the group must be made, and the record must show a proper basis for the allocation.

312. Where Consolidated Basis Not Used. Whenever parent and subsidiary companies are renegotiated not on a consolidated basis but separately, renegotiations with the individual members of the controlled group should be conducted concurrently if possible.

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the amount of such excess inventory as computed at the beginning of the month, until new computations at the beginning of the succeeding month shall be made. It will not be necessary to calculate actual physical inventories and orders on hand at the beginning of each month; a cumulative calculation may be made by applying the purchases made and orders taken in each month to the position at the beginning thereof, until the date of the succeeding physical inventory.

(d) *Treatment of Excess Inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter, and shall be allocated pro-rata between contracts with the Departments and subcontracts taken during the month under which the amounts received or accrued are subject to renegotiation, and other contracts, to the extent that such contracts and subcontracts require the use of the material, up to the end of the month in which the excess inventory is exhausted.

(e) *Exclusion of Profits Attributable to Increment in Value of Excess Inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits.

345. Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions.

345.1 Statutory Exemption. Subsection (i) (1) (D) of the 1943 Act provides that it shall not apply to—

> "(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code."

345.2 Internal Revenue Code. Section 101 (6) of the Internal Revenue Code exempts from taxation:

> "(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the

net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

346. Construction Contracts Awarded as a Result of Competitive Bidding.

346.1 Statutory Exemption. Subsection (i) (1) (E) of the 1943 Act provides that it shall not apply to—

"(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility".

346.2 Interpretation and Application of Exemption.

(1) This section of the 1943 Act is applicable only to amounts received or accrued for fiscal years ending after June 30, 1943 (regardless of the date when the contract was made) under any contract which meets all of the following conditions:

(a) The contract is a contract with a Department (i. e., is a prime contract). The exemption has no direct applicability to subcontracts—but see paragraphs 347 and 356.2 for the principles governing exemption of subcontracts under prime contracts as to which this exemption is applicable.

(b) The contract is for the construction of a building, structure, improvement or other similar facility. The exemption has no applicability to contracts for the furnishing of materials or supplies even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts for the furnishing or installation of machinery or equipment.

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or facility from a contract for the furnishing or installation of machinery and equipment, regard is to be had to the subject matter of the contract. If the subject matter of the contract would, as the subject matter of a subcontract, constitute machinery or equipment within the principles stated in paragraph 335.2(2) and 335.2(5) of these Regulations, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or facility; but will be regarded as a contract for the furnishing or installation of machinery or equipment. In a case where the construction of a building, structure, improvement or facility and

the furnishing or installation of machinery or equipment are embraced within a single contract, the undertaking for the construction job may be severed from the agreement to furnish or install the machinery or equipment and an appropriate finding made as to that portion of the entire contract which may properly be deemed exempt.

(3) If a construction contract is exempt from renegotiation under the provisions of this paragraph 346.2, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or facilities to be performed at or adjacent to the site of the original project are considered a part of the original construction contract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract.

(4) Determination whether this exemption is applicable to any particular contract shall be made by the Department or Service conducting the renegotiation in which such contract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

347. Subcontracts Under Exempt Contracts and Subcontracts.

347.1 Statutory Exemption. Subsection (i) (1) (F) of the 1943 Act provides that it shall not apply to

> "(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph."

347.2 Interpretation and Application of Exemption.

(1) It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i)(4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c)(6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision. (See paragraph 348.5.)

(2) In any case involving the renegotiable status of a subcontract under a prime contract the exempt status of which (by reason of the possible application of paragraph 346.2) has not been determined, the procedure shall be as follows: The Department or Service conducting the renegotiation of such subcontract shall advise the Assignments and Statistics Branch of the identity of the prime contract, the exempt status of which is subject to question. The Assignments and Statistics Branch shall thereupon inform the Department or Service to which the prime contractor has been assigned for renegotiation and such Department or Service shall thereupon determine whether such prime contract is exempt under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination and the said Branch shall thereupon notify the Department or Service conducting the renegotiation of the subcontract. In the event that such prime contractor has not been, and will not be, assigned for

renegotiation, or if previously assigned and such assignment has been cancelled, the Assignments and Statistics Branch shall so notify the Department or Service conducting the renegotiation of the subcontract and such Department or Service shall determine whether the prime contract would be entitled to exemption under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination.

348. Annual Receipts Under Statutory Minimum.

348.1 Statutory Provision. Subsection (c) (6) of the 1943 Act provides

> "(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 Computation of Aggregate Receipts and Accruals.

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (a) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348. For the purpose of applying this provision of the Act gross receipts and accruals will be computed without the elimination of inter-company sales.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve

months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 No Reduction by Refund Below Exemption.

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a)(5)(B) of the 1943 Act), no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a)(5)(B) of the 1943 Act, no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the refund may reduce the aggregate amount of gross receipts or accruals of any member below the floor specified in subdivision (1) or (2) of this paragraph but the aggregate of the recoveries from such contractors after adjustment for state income taxes must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. In the case of companies renegotiated on a consolidated basis the combined adjusted sales will be computed without the elimination of inter-company sales (see paragraph 348.2(2)).

(5) Except in those cases where prior to the commencement of renegotiation a contractor makes a retroactive price reduction or refund, applicable to the period which is the subject of renegotiation, in an amount at least equivalent to the maximum recovery permitted under the preceding provisions of this paragraph (so that if renegotiation proceedings were conducted there could be no recovery by reason of such limitation) the amount of excessive profits will be estimated by the renegotiating agency in the first instance without regard to the possible final effect of the above limitation on the amount of recovery.

(6) In applying the provisions of this paragraph 348.3 to any case in which an adjustment for state income taxes is required (see paragraph 389), excessive profits shall first be determined and the appropriate adjustment for state income taxes shall be made without regard to any limitations imposed by this paragraph upon the amount

of refund. The limitations of this paragraph shall then be applied in determining the amount to be refunded.

348.4 Tests of "Control". In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual Control*: An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership Control*: A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture Control*: A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other Cases*: Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation.

348.5 Subcontracts Under Contracts Exempt Under the Statutory Minimum. Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 Act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 Act. (See paragraph 347.2.)

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"(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

"(7) The term 'standard commercial article' means an article—

"(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

"(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

"(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled 'An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes', or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every material respect with such article with which it is so compared."

(3) Subsection (i)(2) of the 1943 Act provides

"(2) The Board is authorized by regulation . . . to interpret and apply the definition contained in subsection (a) (7)."

354.2 Interpretation and Application.

(1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it

is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved.

(3) For exemptions under the standard commercial article exemption, see paragraph 845.

355. Contracts and Subcontracts When Effective Competition Is Likely to Exist.

355.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 General Interpretation of Exemption. The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 Application of Exemption to Construction Contracts and Subcontracts.

(1) The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist,

(a) the contract or subcontract is one for the construction of a building, structure, improvement or other similar facility. The exemption has no applicability to contracts or subcontracts for the furnishing of materials or supplies even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing or installation of machinery or equipment;

(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular contract or subcontract shall be made by the Department or Service conducting the renegotiation in which such contract or subcontract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 Exemption. (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(4) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(2) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

357. Delegation of Authority to Make Permissive Exemptions. The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. Requests for Exemption. All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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Section 6

LIMITATIONS ON COMMENCEMENT AND COMPLETION OF RENEGOTIATION

360. Scope of Section. The Renegotiation Act of 1943 contains certain limitations on the commencement of renegotiation proceedings and their completion, which will be outlined in this Section. The related subject of termination of all renegotiation under the Act is covered by the succeeding Section 7.

361. Statutory Provision. Subsection (c) (3) of the Renegotiation Act of 1943 provides:

> "(3) No proceeding to determine the amount of excessive profits shall be commenced more than one year after the close of the fiscal year in which such excessive profits were received or accrued, or more than one year after the statement required under paragraph (5) is filed with the Board, whichever is the later, and if such proceeding is not so commenced, then upon the expiration of one year following the close of such fiscal year, or one year following the date upon which such statement is so filed, whichever is the later, all liabilities of the contractor or subcontractor for excessive profits received or accrued during such fiscal year shall thereupon be discharged. If an agreement or order determining the amount of excessive profits is not made within one year following the commencement of the renegotiation proceeding, then upon the expiration of such one year all liabilities of the contractor or subcontractor for excessive profits with respect to which such proceeding was commenced shall thereupon be discharged, except that (A) if an order is made within such one year by the Secretary (or an officer or agency designated by the Secretary) pursuant to a delegation of authority under subsection (d) (4), such one-year limitation shall not apply to review of such order by the Board, and (B) such one-year period may be extended by mutual agreement."

362. Commencement of Renegotiation Proceedings. Unless renegotiation proceedings are commenced either, (1) within one year after the close of the fiscal year in which the excessive profits were received or accrued, or (2) within one year after the statement required under subsection (c) (5) of the 1943 Act is filed with the War Contracts Board, whichever is later, the liability of the contractor or subcontractor for the fiscal year involved will be discharged. Under subsection (c) (1) of the Renegotiation Act of 1943 the mailing of notice by registered mail of the time and place of a conference to be held with respect to the determination of excessive profits constitutes the commencement of the renegotiation proceeding (see paragraph 241).

363. Completion of Renegotiation Proceedings. Renegotiation must be completed by the making of an agreement or the entry of an order within one year following the commencement of the renegotiation proceeding, or the liability of the contractor or subcontractor for

the fiscal year involved will be discharged. The one year period of limitation on completion of renegotiation proceedings does not apply, however, to the review by the War Contracts Board of an order made by a Secretary of a Department or any officer or agency to whom his authority in this respect has been redelegated. Also, the one year period may be extended by mutual agreement. A form which may be used for such extension is set out in paragraph 725, and reference is made to paragraph 821.1 concerning authority to execute the same. The formalities for its execution are similar to the formalities for the execution of a renegotiation agreement (see RR 502.12 including subdivision (5)).

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(c) the Chairman of the Price Adjustment Board of the Department concerned, in his discretion, may authorize the conditional allowance and the use of a special clause, or may advise the renegotiating agency that the item should be unconditionally allowed or disallowed as a cost in renegotiation, or may instruct the renegotiating agency to treat the item in such other manner as the Chairman, in his discretion, may consider appropriate. Additional provisions may be prescribed for insertion in the renegotiation agreement to assure payment by the contractor of any amounts which may become due in the future by reason of the special clause, if, in the opinion of the Chairman, the financial condition of the contractor is such that the interests of the Government require the same.

(5) *Costs Previously Allowed in Renegotiation.* No item of cost shall be deemed "properly chargeable" against or "allocable" to renegotiable business to the extent that such item has, in a previous renegotiation, been charged against or allocated to renegotiable business in determining excessive profits, notwithstanding that such item may be a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code in computing taxable net income for the taxable period corresponding to the fiscal period covered by the current renegotiation.

382. Salaries, Wages and Other Compensation.

382.1 Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in paragraph 381.4.

382.2 Allowances.

(1) Under Section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable". In determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for *reasonable* salaries for such partners as are *active* in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for

general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 Wage and Salary Stabilization.

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 27, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

(4) The National War Labor Board has issued directives setting forth its policies with respect to that portion of the wage and salary stabilization which is administered by such Board.

(5) In any case in which the renegotiating agency determines that there may have been a violation of any applicable stabilization law, executive order or regulation, the renegotiating agency will promptly submit all of the pertinent facts to the War Contracts Price Adjustment Board for a decision as to the proper procedure to be followed.

(6) Full compliance with the Stabilization Act does not preclude the disallowance as a deduction under the Internal Revenue Code of wage and salary payments in excess of "a reasonable allowance". No part of any amount estimated to be not allowable under the Internal Revenue Code will be allowed as a cost against renegotiable business.

382.4 Application of Stabilization Orders in Renegotiation. For fiscal years ending after October 27, 1942, the only limitation on salaries other than the usual test of reasonableness, is the prohibition (with exceptions) of increases in salary rate of over $5,000 annually, existing on October 3, 1942, and in salary rate of $5,000 or less annually, existing on October 27, 1942, without prior approval of governmental authorities. The exceptions referred to are set out in paragraph 851. They first appeared in Section 6 of the stabilization regulations and later in substantially similar form in Section 10 of the amended stabilization regulations referred to in subdivision (2) of paragraph 382.2. As set out in paragraph 851, they appear in the form contained in the amended stabilization regulations.

382.5 Brokers' Commissions. Commissions paid or payable to brokers or agents in connection with the procurement or performance of war contracts pursuant to a legally binding arrangement made in good faith prior to the fiscal year covered by the renegotiation will be allowed as a cost in the absence of special circumstances. Such special circumstances might exist where the broker or agent was a partner, officer or director of the contractor; or where any partner, officer or director of the contractor participated in the commissions paid to the broker or agent; or where the original arrangement between the contractor and the broker or agent was not made at arm's length. If it appears that the payment of the commissions might violate the provision in the contracts of any Department against contingent fees other than those paid to "bona fide established commission or selling agencies maintained by the contractor for the purpose of securing business", the question ordinarily will be taken up with the Purchases Division, Army Service Forces, the Procurement Legal Division of the Navy Department, or the appropriate division of the other Departments, and, subject to the provisions of paragraph 381.4 (2), the commissions may be disallowed. Whenever the payment of commissions is allowed to the contractor, consideration will be given to the prompt renegotiation of the broker or agent if the services he performed bring him within the definition of "subcontractor". (See paragraph 203.4 and 336.)

382.6 **Pension, Annuity, Stock Bonus and Profit Sharing Plans.** The policy set out below will be followed in connection with the allowance as an item of cost against renegotiable business of payments made by a contractor on account of any employee pension, annuity, stock bonus, or profit sharing plan (hereinafter referred to as "the plan").

(1) The deductibility for Federal income tax purposes of payments pursuant to the plan is governed by sections 23(a), 23(p) and 165 of the Internal Revenue Code. If the Bureau of Internal Revenue has determined that payments (including payments to bring annuities up to date) on account of the plan of the particular contractor concerned are deductible, such payments shall be allowed as an item of cost in renegotiation to the extent allocable to renegotiable business.

(2) If the Bureau of Internal Revenue has not finally determined the deductibility of such payments, the renegotiating Department must estimate the amount of such payments which is allowable as a deduction under sections 23(a), 23(p) and 165 of the Internal Revenue Code. The Department will be guided by the following general principles:

(a) the employer's payment into the plan, when added to other compensation paid the employee, cannot exceed reasonable compensation for services rendered by the employee beneficiary of the plan,

(b) the employees' rights under the plan must be nonforfeitable at the time the employer's payment is made *or* the plan must qualify under the provisions of section 165 of the Internal Revenue Code. In determining whether it does so qualify, the renegotiating agency should consult section 165 and the appropriate Treasury Regulations for the exact requirements for qualification. In general, the following requirements must be met: (i) the plan must imply a permanent as distinguished from a temporary program; (ii) it must not be a subterfuge for distribution of profits; (iii) it must be for the exclusive benefit of employees; (iv) it must be impossible, under the trust, to divert the trust property or income to purposes other than the employees' benefit; (v) it must cover a sufficient number of employees so as to be non-discriminatory; and (vi) in operation, the plan must not discriminate in favor of employees who are officers, stockholders or highly compensated employees. A plan which qualifies under the foregoing is not disqualified by the fact that the employer may be entitled to receive back amounts which result from erroneous actuarial computations.

(c) The payments on account of the plan, to be allowed as deductions for Federal income tax purposes, must actually have been paid within the taxable year except that as to payments into a qualified plan, a taxpayer on an accrual basis of accounting is deemed to have made a payment on the last day of the year if the payment is on account of such taxable year and is made within 60 days after the close of the taxable year of accrual.

(3) Payments made pursuant to any plan, like any other expense, should be allowed only to the extent allocable to renegotiable business, such amount to be determined in accordance with the principles applicable to the allocation of expenses generally.

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties payable to the licensor after the effective date of the notice under the statute, whether or not accruing before or after the date, and does not and cannot require the refund of any royalties which have been paid prior thereto.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are subject to an order under the Royalty Adjustment Act, the Departments will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the rates or amounts fixed in the order.

(4) In renegotiation with a licensee for a period prior to that in which royalty accruals are subject to an order under the Royalty Adjustment Act, no weight will normally be given to the determination made in a later order as to what rates and amounts of royalties are fair and just. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23(a) of the Internal Revenue Code. Particular attention should be given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code, even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention

or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee.

388.2 **Corporate Charitable Contributions.** Contributions of the character described in Section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under Section 23 (q).

388.3 **Cost Allowance in Connection with Raw Materials.** Reference is made to paragraphs 344.3 and 344.4 for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials.

389. State Income Taxes.

389.1 **In General.** Under subsection (a) (4) (B) of the 1943 Act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that in determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income (other than Federal taxes) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. The term "taxes measured by income" is interpreted to mean taxes which vary in accordance with the amount of net income of the taxpayer. Such term does not include taxes imposed upon or measured by gross income, gross receipts or sales. Such taxes measured by net income are herein referred to generally as "state income taxes" although actually they may not be designated as "income taxes" in the legislation imposing such taxes, and although they may be imposed by political sub-divisions other than a state. For the effect of the floor provision limiting refunds of excessive profits, see paragraph 348.3(6).

389.2 **Adjustment for State Tax Imposed at a "Flat Rate".**

(1) The amount of unadjusted excessive profits, without consideration of any state income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The state income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under Section 3806 of the Internal Revenue Code. (See paragraph 440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative

407.3 **Treatment of Disallowed Costs and Adjustment of Fees.**

(1) Disallowances of costs under cost-plus-fixed-fee contracts made in accordance with the terms of the contracts will, except as noted below, be deducted from the fee. If, however, any part of the amounts so disallowed are determinable business expenses which would otherwise necessarily have been incurred for the continued operation of the business as an enterprise and, if such amounts are deductions of the character permitted under the applicable provision of the Internal Revenue Code and the contractor has fixed-price business, the amount of such disallowances may be allocated to fixed-price renegotiable and non-renegotiable business in proper proportions. Reference is made to paragraphs 506.6 and 741.2(7), relating to waiver of claims under a cost-plus-fixed-fee contract when the amount of the item disallowed under such contract is allowed as a cost against renegotiable business.

(2) The resultant net fee in terms of percent of costs will be related to the percent fee provided for under the contract or contracts.

(3) Actual product costs will be related to the prices specified in the contract or contracts on which the fee is based.

(4) The resultant dollar fee will be related to the work done under the contract or contracts, the performance results, and the volume of business resulting from the contract or contracts.

(5) The elements stated in paragraphs 1, 2, 3 and 4 above should be reviewed, when appropriate, with the procurement officers responsible for the placing and supervision of the cost-plus-fixed-fee contracts for the purpose of determining whether or not the fee result is consistent with that intended when the contract or contracts were entered into.

407.4 **Profit Margins.**

(1) The margin of profit on cost-plus-fixed-fee contracts should be less than that on fixed-price contracts for the same volume of the same product under similar circumstances.

(2) If there has been a reduction of costs below the estimated costs on which the fee was based and it is clearly demonstrated that such reduction of costs is attributable to the contractor's own efforts, the fee should not be reduced merely because of this reduction in costs. The fees received under a cost-plus-fixed-fee contract should have a reasonable relationship to the services performed by the contractor.

408. **Factors Requiring Consideration.** The Renegotiation Act of 1943 specifies factors which must be taken into consideration in determining excessive profits and requires the consideration of additional factors when published in the regulations of the War Contracts Board.

409. **General Policy.** Reasonable profits in every case should be determined with reference to the particular factors present without limitation or restriction by any fixed formula with respect to rate of profit, or otherwise. Renegotiation should not result in a margin of profit based on the principle of a percentage of cost as profit. Contractors who sell at lower prices and produce at lower costs through

good management, improved methods of production, close control of expenditures and careful purchasing should receive a relatively more favorable determination than those who do not. Mere claims of the contractor, in the above terms, for favorable consideration cannot be recognized. They must be supported by established facts, analyses and appropriate comparisons which clearly demonstrate their validity.

410. Efficiency of Contractor.

410.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(i) efficiency of contractor, with particular regard to attainment of quantity and quality production, reduction of costs and economy in the use of materials, facilities, and manpower."

410.2 Comment. Consideration is to be given to the contractor's record for efficiency or lack of efficiency in operations with particular attention to the following:

(1) The quantity of production; for example, in relation to available physical facilities; the meeting of production schedules; the expansion of facilities; the maximum use of available production facilities.

(2) The quality of production; for example, the record of maintenance of standards of quality; the rejection record; reported mechanical or other difficulties in the use or installation of the product.

(3) The reduction of costs; for example, the decrease in costs per unit of production or per unit of sales as between fiscal years and as compared with other contractors producing the same or similar products where the operations are reasonably comparable; the decrease in administrative, selling or other general and controllable expenses; the decrease in prices paid vendors on purchased materials and subcontracted items or units. (See paragraph 411.2 (1)-(3).)

(4) The economy in the use of materials, facilities and manpower; for example, the decrease in quantity of materials used in relation to production and the number of employees in relation to production; the substitution of non-critical materials for critical materials; the reduction of waste.

411. Reasonableness of Costs and Profits.

411.1 Statutory Provision. Subsection (a) (4) (A) of the Renegotiation Act of 1943 provides that in determining excessive profits there shall be taken into consideration the following factor:

> "(ii) reasonableness of costs and profits, with particular regard to volume of production, normal pre-war earnings, and comparison of war and peacetime products."

411.2 Comment.

(1) Consideration is to be given to the reasonableness or the excessiveness of costs and profits of the contractor. Comparisons

CHAPTER V

AGREEMENTS AND STATEMENTS

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CHAPTER V
AGREEMENTS AND STATEMENTS

500. Scope of Chapter. This Chapter covers the completion of renegotiation. Section 1 deals with the form, preparation and administration of agreements. Section 2 relates to the statement to be furnished the contractor in connection with determinations by agreement or order.

Section 1
AGREEMENTS AND CLEARANCES

501. General.

501.1 Statutory Authority.

(1) Subsection (c)(4) of the 1943 Act provides as follows:

> "For the purposes of this section the Board may make final or other agreements with a contractor or subcontractor for the elimination of excessive profits and for the discharge of any liability for excessive profits under this section. Such agreements may contain such terms and conditions as the Board deems advisable. Any such agreement shall be conclusive according to its terms; and except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, (A) such agreement shall not for the purposes of this section be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and (B) such agreement and any determination made in accordance therewith shall not be annulled, modified, set aside, or disregarded in any suit, action, or proceeding."

(2) Subsection (c)(1) of the 1943 Act provides, in part, as follows:

> "Any such agreement, if made, may, with the consent of the contractor or subcontractor, also include provisions with respect to the elimination of excessive profits likely to be received or accrued."

501.2 Uses of Agreements and Clearances. The following types of instruments are used in connection with renegotiation:

(1) *Renegotiation agreements.* These are to be used when, upon conclusion of the renegotiation proceedings, a final agreement is reached between the contractor and the renegotiation officials of the Government that a certain amount of excessive profits is to be eliminated. A form of such agreement is set forth in these Regulations, paragraph 741.1.

(2) *Clearances.* These are to be used where, upon a review of the financial and other data submitted by the contractor, it is formally determined that there are no excessive profits for the fiscal year under review. (See paragraph 742.)

502. **Standard Form of Agreement.**

502.1 **In General.** When, as a result of renegotiation, an agreement has been reached with a contractor for the elimination of excessive profits, such agreement will ordinarily be evidenced by the execution of the standard form of renegotiation agreement, which is set forth in paragraph 741.1 of these Regulations. The provisions of the standard form of agreement are discussed in the succeeding paragraphs.

502.2 **Article 1: Profits to be Eliminated.** The agreed dollar amount of excessive profits to be eliminated, after giving effect, in accordance with subsection (a)(4)(B) of the 1943 Act, to any adjustment for taxes, other than Federal taxes, measured by income, will be set forth in Article 1. Ordinarily such amount will be the excessive profits determined to have been received or accrued during a particular fiscal year under all of the contractor's contracts and subcontracts subject to renegotiation. When the renegotiation covers only contracts and subcontracts completed during a fiscal year or has been conducted only with respect to certain contracts and subcontracts, the language used in Article 1 should be modified accordingly. When the amount of refund is limited by the application of the provisions of paragraph 348.3, an appropriate statement to that effect will be included in Article I of the Renegotiation Agreement (see suggested form of statement in footnote to Article 1, paragraph 741.1).

502.3 **Article 2: Warranty: Exhibit A: Exhibit B.** Renegotiation is, in large measure, conducted upon the basis of information and data submitted by the contractor, particularly financial data. Since such material is accepted in good faith by the Government as the basis for conducting the renegotiation, it is appropriate that the contractor warrant its correctness. Article 2 contains such a warranty, which extends to and includes the summarized data set forth in Exhibit A (see paragraph 503) which is to be annexed to the agreement. If the renegotiation includes subsidiaries of the contractor and has been conducted on a consolidated basis, a list of the subsidiaries will be set forth on an Exhibit B to be annexed to the agreement, the correctness of which the contractor will also warrant (see paragraph 504). An appropriate modification will be made in Article 2 when Exhibit B is used. (See paragraph 741.2(2).)

502.4 **Article 3: Tax Credit Under Section 3806 of the Internal Revenue Code.**

(1) In most instances the contractor will have been assessed Federal income or income and excess profits taxes on the profits to be eliminated. A credit equal to the amount of such taxes is required by the Renegotiation Act to be allowed against the refund to be made in accordance with Section 3806 of the Internal Revenue Code. The provisions of Article 3 cover the contractor's representation that the profits to be eliminated were included in income in his tax return for the fiscal period involved and his agreement to procure a computation by the Bureau of Internal Revenue of the amount by which his taxes for that fiscal period are decreased by reason of the elimination of such profits from income. The procedure for procuring such computation is set forth in paragraph 442 of these Regulations.

(2) If the renegotiation is concluded before the contractor has filed his Federal income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in paragraph 741.2(3)(a) of these Regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under Section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in paragraph 741.2(3)(b) of these Regulations.

502.5 Article 4: Terms of Payment.

(1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in paragraph 741.2(5) of these Regulations. The Department or Service which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company or any of such corporations, the payment provision, in accordance with the footnote to Article 4 on the standard form will require payment of the amount thereof to the RFC Price Adjustment Board.

(2) For the purpose of determining the portion of the profits which are to be eliminated which were derived from such prime contracts, the Department conducting renegotiation will segregate the amounts received or accrued under such contracts from amounts received or accrued under other renegotiable contracts and subcontracts involved in the renegotiation of a particular contractor. It will also generally segregate the profits derived from such prime contracts. Where, however, it is indicated that the margin of profit attributable to contracts with the RFC subsidiaries is substantially the same as that attributable to other contracts and subcontracts involved in the renegotiation, a fair allocation of the profits to be eliminated may be effected by prorating the amount of the refund on the basis of the amount of renegotiable business attributable to contracts with the RFC subsidiaries and the amount of such business attributable to other contracts and subcontracts. Accordingly, the Department conducting renegotiation may determine the amount of the renegotiation refund to be paid to the RFC Price Adjustment Board on such basis where it is believed that the application of the same will result in a fair and reasonably accurate result.

(3) Responsibility for the collection of, and for the maintenance of records concerning, any amounts due the RFC Price Adjustment

Board under renegotiation agreements, shall rest with the RFC Price Adjustment Board, and any such agreements providing for refunds to the RFC under the 1943 Act shall be referred to the RFC Price Adjustment Board for the collection of that portion of the refund payable to that Board. The Department conducting the renegotiation will retain responsibility for the collection of only that portion of the refund which is payable into the Treasury of the United States. In such cases, an authenticated copy of the renegotiation agreement shall be forwarded to the RFC Price Adjustment Board, through the Assignments and Statistics Branch, Renegotiation Division, ASF. The Assignments and Statistics Branch should be promptly notified of any default in the collection of any installment due under such agreements and the enforcement of the obligations under the agreement properly coordinated under the supervision of the War Contracts Price Adjustment Board.

(4) In the case of suit for the collection of any amounts due under any renegotiation agreements in which the RFC is entitled to a portion of the refund, under ordinary circumstances the Assignments and Statistics Branch should assign such case for collection to the Department then having the predominant interest in the balance of the refund.

(5) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(6) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see paragraph 505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(7) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in paragraph 422 of these Regulations.

(8) Provision is made in the standard form of renegotiation agreement for the payment of interest on defaulted installments. (See paragraph 741.1 subdivision (4) and paragraph 741.2(5).) The rate specified in the agreement is "the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest." (See paragraph 807.)

502.6 **Article 5: Article Requiring Elimination of Additional Excessive Profits.** The provision set forth in paragraph 741.1 of these Regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the Renegotiation Act of 1943 are increased.

502.7 **Article 6: Covenant Against Contingent Fees.** This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts.

502.8 **Article 7: Officials Not to Benefit.** This article is also a standard provision in most Government contracts, required by Revised Statutes, Section 3741, as amended (41 U. S. C. Sec. 22).

502.9 **Article 8: Discharge of Liability.** In consideration of performance by the contractor of the terms of the agreement he is granted a discharge of liability in accordance with subsection (c)(4) of the Renegotiation Act. When the renegotiation covers only contracts and subcontracts completed during the fiscal year or has been conducted only with respect to certain contracts or subcontracts, care should be taken that Article 8, when read in connection with Article 1 (paragraph 502.2) discharges the liability of the contractor only with respect to the contracts and subcontracts actually renegotiated.

502.10 **Article 9: Renegotiation Rebate.** This article specifically reserves to the contractor his rights under subsection (a)(4)(D) of the Renegotiation Act in the event that a recomputation of his amortization deduction under Section 124(d) of the Internal Revenue Code should entitle him to a rebate.

502.11 **Article 10: Execution of the Agreement.** The persons executing the agreement on behalf of the contractor and on behalf of the Government state that they do so upon proper authority.

502.12 **Formalities of Execution.**

(1) If the contractor is a corporation, the agreement must be accompanied by a certified resolution of the Board of Directors of the contractor (or the equivalent committee or other body). The form of the resolution, the adoption of the resolution, and the execution of the certificate must all be in accordance with the formalities required by the particular state laws involved. The resolution itself should state:

(a) that the agreement is being entered into pursuant to the Renegotiation Act;

(b) the amount of profits to be eliminated—and the fiscal year for which they are to be eliminated;

(c) the title of the corporate officer who is being authorized to execute the agreement on behalf of the corporation; and

(d) the title of the corporate officer authorized to affix and attest the corporate seal thereon.

The certificate, certifying the adoption of the resolution should state:

(a) the name and capacity of the officer signing the certificate;

(b) the body adopting the resolution (normally this will be the Board of Directors, but may, in a particular case, be an Executive Committee or similar body);

(c) the date of the meeting;

(d) the fact that a quorum of the Board (or other body) was present throughout the meeting;

(e) that the resolution was duly adopted;

(f) if the particular agreement is specifically referred to in the resolution, that the agreement to which the certified resolution is attached is the same as that referred to in the resolution; and

(g) that the resolution has not been modified or rescinded and that it is in full force and effect.

If the resolution is adopted by an Executive Committee or similar body (other than the Board of Directors) the certificate must also include satisfactory evidence of the body's authority to act.

(2) The form and method of execution of the renegotiation agreement in the case of a consolidated renegotiation is described in paragraph 502.13.

(3) If the contractor is a partnership, all general partners therein should execute the agreement.

(4) If the contractor is a joint venture, each participant should execute the agreement.

(5) If the authority of the person signing the agreement is based upon a written instrument or court order or provision of law (as where the agreement is executed on behalf of a corporation in dissolution, or an estate or trust, or where the authority derives from a power-of-attorney), the agreement should be accompanied or supported by proper evidence of such authority.

(6) The Department conducting the renegotiation has authority to depart from the requirements of this paragraph in its discretion.

502.13 Consolidated Renegotiation—Agreement, Form and Execution. If a group consists of affiliated enterprises, other than parent and subsidiary corporations, the standard form of agreement should be rewritten to include as parties thereto all members of the group to which are allocated any amount of the excessive profits and it must be executed by each such member of the group. If the group consists of parent and subsidiary corporations, the renegotiating agency may require the standard form of agreement to be re-written to include as parties thereto, in addition to the parent corporation, all subsidiaries to which are allocated any amounts of the excessive profits and each such subsidiary must execute the agreement. The renegotiating agency may, however, use the standard form of agreement executed only by the parent corporation. In such event, the following procedure will be followed: (a) the variation in Article 2 set forth in paragraph 741.2(2) shall be included in the agreement; (b) Exhibit B to the agreement must contain a clause by which each subsidiary to which is allocated any portion of the excessive profits agrees to pay such portion; (c) Exhibit B must be duly executed by each such subsidiary and an appropriate resolution authorizing such execution must be furnished (see paragraph 502.12); and (d) Exhibit B will also provide that payment by the parent corporation will be applied ratably to satisfy the liability of each member of the group. A form of Exhibit B to be used where the foregoing clauses are required, is set forth in paragraph 741.2(2).

503. Exhibit A. There shall be attached to every renegotiation agreement providing for the elimination of excessive profits an exhibit

designated "Exhibit A," which shall contain as a minimum, the financial data and information referred to in paragraph 741.3. In the discretion of the Department conducting the renegotiation, any additional financial data or information may be included in Exhibit A.

504. **Exhibit B.** When the contractor has subsidiaries, there shall be attached to the renegotiation agreement a list of such subsidiaries in detail. Such list shall be designated as "Exhibit B." Ordinarily, all of such subsidiaries will have been consolidated with the parent company for purposes of the renegotiation agreement, and if any has not been so consolidated, that fact should be specially noted on Exhibit B. The amount of excessive profits, if any, allocated to each subsidiary must be shown on such exhibit. A form of clause referring to Exhibit B for insertion in the renegotiation agreement and a form of Exhibit B are set out in paragraph 741.2 subdivision (2). (See also paragraph 741.4.)

505. **Exhibit C.** If the provisions for payment of the cash refund or for other method of elimination of excessive profits are such as cannot be readily set out in Article 4 of the standard form of agreement, such provisions may be set out in an additional exhibit to the agreement, designated "Exhibit C" which should be attached to the agreement and incorporated therein by a reference thereto in Article 4 of the agreement.

506. **Additional Provisions: Variations.**

506.1 **In General.** The basic provisions of the standard form of agreement set forth in paragraph 741.1 of these Regulations are to be used in all cases except as otherwise noted in this paragraph 506. Additional provisions may be added when required to fit particular situations. Paragraph 741.2 of these Regulations contains forms of clauses which, when appropriate, should be used to meet certain of these special situations. Variations in language are permissible where necessary, but unless otherwise noted in this paragraph 506 in no event may any such change be made, or any provision be added to the agreement, when the effect would be to alter or modify the substance or intent of the basic provisions. The conclusion of the official signing the agreement on behalf of the Government pursuant to duly delegated authority that the agreement meets the requirements of this Regulation shall be evidenced by the fact of execution and shall be conclusive. (See paragraph 821.1.)

506.2 **Forward Pricing Clause.** The Renegotiation Act of 1943 specifically authorizes provision in the renegotiation agreement, by agreement with the contractor, for the elimination of excessive profits likely to be received or accrued in the future. When agreement cannot be reached upon specific price reductions, use may be made in the renegotiation contract of the article set forth at paragraph 741.2(1). In this connection reference is made to paragraph 430 and following. If specific price reductions are agreed upon, the agreement should clearly identify the contracts affected by such price reductions in order that the Department administering the agreement can determine whether the contractor has complied therewith.

506.3 **Anti-Discrimination Clause.**

(1) Executive Order No. 9346 dated May 27, 1943 requires "all contracts hereafter negotiated or renegotiated" to contain an article of the type set forth in paragraph 741.2(4) of these Regulations.

(2) Whenever a renegotiation agreement, executed under the Act, expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause, then the renegotiation agreement shall include the provision set forth in paragraph 741.2(4) of these Regulations. Except in such cases the requirements stated in (1) above do not apply to renegotiation agreements.

(3) If the renegotiation agreement is to be followed by a supplemental agreement or agreements modifying the terms of existing contracts with respect to future deliveries, each such supplemental agreement will provide for the inclusion in the contracts so modified, of the anti-discrimination clause.

506.4 **Clause to Be Used in Certain Cases Where Renegotiation Is Conducted on Completed Contract Basis.** Whenever renegotiation is conducted on a completed contract basis pursuant to the request of a contractor in the form therefor which is set forth in paragraph 723, the clause set forth in paragraph 741.2 (6) must be included in the renegotiation agreement. In each such case, a copy of such form executed by the contractor requesting renegotiation on a completed contract basis (paragraph 723) must be attached to the renegotiation agreement as an exhibit as provided in the clause set forth in paragraph 741.2 (6).

506.5 **Clause Covering Conditional Allowance of Cost.** If pursuant to the procedure set forth in paragraph 381.4 (4) of these Regulations, an item of cost is allowed conditionally pending final determination of its allowability as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code, an appropriate clause will be inserted in the renegotiation agreement. The form of the clause may vary, but essentially it will consist of an agreement by the contractor to repay, as additional excessive profits, the amount of the item allowed as a cost in renegotiation which is finally determined to be not allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code. As pointed out in paragraph 381.4 (4), the clause must be approved by the Chairman of the Price Adjustment Board of the Department concerned before it can be used in the renegotiation agreement.

506.6 **Waiver of Claims Under Cost-Plus-Fixed-Fee Contracts.** If an item of cost is allowed in renegotiation for an item for which a claim for reimbursement under a cost-plus-fixed-fee contract has been made and disallowed by the Government, the contractor should waive and release such claim under the cost-plus-fixed-fee contract involved to the extent that the amount of the claim is allowed as a cost against renegotiable business (see paragraph 407.3). There is set out in paragraph 741.2(7) an appropriate form of clause relating to such claims. The form of clause may be varied to fit the particular case.

506.7 **Other Special Provisions.** Examples of additional special clauses are set out in the supplement to the standard form of agreement (paragraph 741.2). It is recognized that these provisions are not exclusive and that many circumstances will be encountered requiring other clauses and provisions. The form and substance of such provisions will be within the discretion of the Department conducting the renegotiation, subject to the limitation indicated in paragraph 506.1 of these Regulations.

507. **Prohibited Provisions.**

507.1 **Reservations Impairing Finality of Agreement.** No renegotiation agreement is acceptable if it or any authorizing resolution or letter of transmittal contains any reservation which might be interpreted as permitting the contractor to reopen the agreement if the Renegotiation Act is amended or declared unconstitutional, or interpretations of the Act are changed, or new exemptions are established or for any similar reason.

507.2 **Provision for Refund by the Government.** Other than recognition of the right to a renegotiation rebate in accordance with subsection (a)(4)(D) of the 1943 Act by reason of a future recomputation of the amortization deduction pursuant to section 124(d) of the Internal Revenue Code (see paragraph 502.10), no provision shall be made in any renegotiation agreement which would have the effect of requiring the Government under any circumstances to repay all or any part of any payment made to it thereunder.

507.3 **Periodic Refunds of Future Excessive Profits.** As part of the general policy of discouraging excessive prices and of encouraging price reductions, final agreements in renegotiation should not contain provisions for any periodic or other refunds by contractors of excessive profits realized after the date of such agreements. However, it is appropriate for such agreements to contain provisions for future price reductions or stated discounts from an agreed upon price.

508. **Clearances.**

508.1 **When Given.** If, as a result of renegotiation, it is found that no excessive profits have been received by or accrued to the contractor during the fiscal year under consideration, the contractor should be given a clearance for such year.

508.2 **Use and Form of Clearance Notice.**

(1) The form of clearance notice set forth in paragraph 742 should be used in all cases unless the contractor requests a formal clearance agreement.

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702. Letters of Preliminary Inquiry.

702.1 Letter of Preliminary Inquiry (For Use by Assignments and Statistics Branch).

In reply refer to:
LPI No. . . . . .

War Contracts Price Adjustment Board
Joint Price Adjustment Board
Room 3D 573, The Pentagon
Washington 25, D. C.

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish to the undersigned the information called for by the "Standard Form of Contractor's Report." On the basis of information thus presented a determination will be made as to whether or not renegotiation proceedings will be commenced.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report", which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed, in duplicate, within thirty days of the date of this letter. It is to be sent to the undersigned, Room 3D 573, The Pentagon, Washington 25, D. C. If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board
Joint Price Adjustment Board

Enclosures:

Standard Form of Contractor's Report (3)

Instructions for Preparation of
Standard Form of Contractor's Report

Pamphlet containing Renegotiation Act of 1942 and 1943

702.2 Letter of Preliminary Inquiry (For Use in Assigned Cases).

(*For use in cases already assigned*)

In reply refer to:
LPI-A No. . . . . .

(Letterhead of Appropriate Department or Section)

Gentlemen:

Price Adjustment Boards and Sections have been established for the conduct of statutory proceedings for the renegotiation of contracts and subcontracts. Renegotiation with respect to contractors whose fiscal years ended on or before June 30, 1943 is controlled by the Renegotiation Act of 1942 as amended by the retroactive provisions of the Renegotiation Act of 1943. Renegotiation with respect to fiscal years ended after June 30, 1943 is controlled by the Renegotiation Act of 1943. Copies of both Acts are enclosed herewith.

The matter of conducting your statutory renegotiation proceedings has been assigned to this office.

Unless the amount of your business during your latest complete fiscal year was less than the statutory minimum as defined by subsection (c) (6) of the Act applicable to your business for that year, you are required by law to furnish the information called for by the "Standard Form of Contractor's Report." On the basis of the information thus presented, a determination will be made as to whether or not further renegotiation proceedings will be necessary.

To assist you in determining whether or not your business exceeded the statutory minimum as defined in the statutes referred to, your attention is invited to the "Instructions for Preparation of Standard Form of Contractor's Report" which accompany this communication.

The enclosed "Standard Form of Contractor's Report" is requested pursuant to the statutory power to obtain information deemed necessary under the Act. Your filing of this "Standard Form of Contractor's Report" in satisfactory form will be deemed a compliance with the statutory provision requiring the filing by contractors and subcontractors of a financial statement under the first sentence of subsection (c) (5) (A) of the 1943 Act, if filed within the time prescribed in such Act.

The "Standard Form of Contractor's Report" is to be filed with the undersigned, in duplicate, within thirty days of the date of this letter.* If your concern reports on a fiscal year basis for federal income tax purposes, the Report prepared should cover the same period.

If all of the information called for by this form has been furnished the Price Adjustment Agency to which the contractor has been assigned, refer to the final paragraph of instructions.

A separate letter or statement, in duplicate, containing any comments which you believe pertinent with respect to statutory renegotiation as it affects you will be appreciated.

(Appropriate Authorized Signature)

Enclosures:
Standard Form of Contractor's Report (3)
Instructions for Preparation of
Standard Form of Contractor's Report
Pamphlet containing Renegotiation Act of 1942 and 1943

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* Omit "within thirty days of the date of this letter" if this letter is being sent within thirty days of the time for filing prescribed by the 1943 Act.

702.3 Alternative Form of Letter of Preliminary Inquiry.

WAR CONTRACTS PRICE ADJUSTMENT BOARD
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

Subsection (c) (5) (A) of the Renegotiation Act of 1943 requires concerns which are subject to that Act to file financial statements in accordance with the regulations prescribed by the War Contracts Price Adjustment Board. A penalty is prescribed for non-compliance. Copies of the Act and pertinent Regulations are enclosed herewith as well as the required form of Report.

The records of this office do not indicate that you have filed such a financial statement. Although without authority to waive or extend the requirements of the Act with respect to time of filing, we bring this matter to your attention with the suggestion that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the required financial statement with the least possible delay.

Clearance and Assignment Officer
on behalf of
WAR CONTRACTS PRICE ADJUSTMENT BOARD

Enclosures:

Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements

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702.4 Follow-up to Letter of Preliminary Inquiry from Assignments and Statistics Branch.

In reply refer to:
LPI No. . . . .

WAR CONTRACTS PRICE ADJUSTMENT BOARD
3D 573—The Pentagon
Washington 25, D. C.

Gentlemen:

We attach a copy of a communication sent to you under date of ..... by which we requested that you file with this office the "Standard Form of Contractor's Report" which was enclosed therewith. We have no record of your having filed such a Report nor of the receipt of a statement from you that the Renegotiation Act of 1943 is not applicable in your case.

Your attention is called to the fact that by the provisions of subsection (c) (5) (A) of the Act, the "Standard Form of Contractor's Report" is required to be filed by all concerns subject to that Act. A penalty is prescribed for non-compliance.

Although without authority to waive or extend the requirements of the Act with respect to the time for filing of Reports, we suggest that, if your business exceeded the statutory minimum as defined in subsection (c) (6) of the Act, you should file the Report with the least possible delay.

On the other hand, if your business did not exceed the statutory minimum as defined in subsection (c) (6) of the Act, you are not required to file the "Stand-

ard Form of Contractor's Report" to which we refer. In that event, it would be helpful for the maintenance of our records if you would file, in duplicate, the enclosed form entitled "Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943".

Clearance and Assignment Officer
on behalf of
War Contracts Price Adjustment Board

Enclosures:

(Budget Bureau No. 49-R182) (LPI Letter)
Standard Form of Contractor's Report
Pamphlet entitled "Renegotiation"
Excerpts from Renegotiation Regulations pertaining to filing of Mandatory Financial Statements
Statement by Contractor, Non-Applicability of the Renegotiation Act of 1943

703.3 Form No. 103 (Suggestion for Reassignment).

To Be Submitted in Quadruplicate

To: Assignments and Statistics Branch
War Contracts Price Adjustment Board
Room 3D 573, The Pentagon
Washington, D. C.

Subject:

1. The above contractor has been assigned to this office for renegotiation of its 1943 fiscal year. Reassignment is suggested for the following reasons(s):

☐ Principal war product.....
☐ Substantial predominance of interest in contracts held by.....
☐

2. The above contractor (has) (has not) been consulted with respect to propose reassignment and (has) (has not) indicated approval.

PRICE ADJUSTMENT BOARD (SECTION)

1st Ind.

To: Price Adjustment Board (Section)

☐ The above contractor is hereby reassigned to .....
☐ It is deemed inappropriate to reassign the above contractor.

For the Director of the Renegotiation Division:

Chief, Assignments and Statistics Branch

24-64954

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704. Forms for Cancellation of Assignment.

704.1 Statement by Contractor of Non-Applicability.

STATEMENT BY CONTRACTOR

Non-Applicability of the Renegotiation Act of 1943

To the War Contracts Price Adjustment Board:

We acknowledge receipt of a copy of the pamphlet entitled "Renegotiation" containing the text of the Renegotiation Act of 1943 and have noted particularly the provisions of subsections (a) (5), (c) (5) (A) and (c) (6) of that Act.

We certify that the aggregate receipts or accruals of the undersigned and of all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts with the War Department, Navy Department, Treasury Department, Maritime Commission, War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Company and Rubber Reserve Company and under subcontracts as defined in the Act, *including* those which are exempted under subsection (i) of the Act or which expressly provide that they are not subject to renegotiation pursuant to the authority granted by said subsection (i) (but not including commissions and other income within the meaning of subsection (a) (5) (B) of the Act), did not exceed $500,000 for the fiscal year ended ..... 194....; and we further certify that commissions and other income within the meaning of subsection (a) (5) (B) of the Renegotiation Act of 1943 received or accrued by the undersigned and by all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts and subcontracts above referred to did not exceed $25,000 for the same fiscal year.

In making this certification recognition is given to the fact that in order to qualify for exemption it is necessary that both of the above conditions should be met; i. e., that the total of receipts or accruals under contracts with the above-named Departments or agencies and subcontracts as defined in the Act (excluding commissions and other income below mentioned) does not exceed $500,000 *and* that the total of commissions and other income within the meaning of subsection

(a) (5) (B) of the Act does not exceed $25,000. Accordingly, we do not intend to file a financial statement in conformity with the provisions of the first sentence of subsection (c) (5) (A) of the Act. If we have been assigned for statutory renegotiation, we request that such assignment be cancelled.

Very truly yours,

.....
Name of Contractor

By .....
(Principal officer, partner or proprietor)

.....
Title of officer

.....
Address of Contractor

Dated ..... 194..

In preparing this form, there will be printed on reverse side, subsections (c) (5) (A), (c) (6) and (a) (5) of the 1943 Act.

704.2 Notice to Contractor of Cancellation of Assignment.

NOTICE TO CONTRACTOR OF CANCELLATION OF ASSIGNMENT

Date .....

Contractor's Name
Address

Dear Sir:

Upon review of the information submitted by you in connection with renegotiation under the Renegotiation Act, as amended, this office recommended to the War Contracts Price Adjustment Board that your assignment to this office for renegotiation be cancelled for your fiscal year ending .....

This office is advised that such assignment has been cancelled in accordance with its recommendation.

While such cancellation does not operate as a release of liability under the Renegotiation Statute, nevertheless, in the absence of further developments no further action is contemplated.

Very truly yours,

(*Name of Renegotiating Department or Service*)

704.3 Request by Renegotiating Agency for Cancellation.

See paragraph 206.2

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paragraph 1 (b) above and in determining profits derived therefrom, as though the contractor had kept (its) (his) books and had filed (its) (his) Federal income tax returns with respect to such contracts and subcontracts on a completed contract basis, including the application of the $500,000 exemption set forth in subsection (c) (6) of the Renegotiation Act and the application of the $500,000 "floor" as interpreted in paragraph 348.3 of the Renegotiation Regulations.

(b) With respect to any subsequent fiscal year, all of the contractor's construction contracts and subcontracts completed within such fiscal year, which are by law subject to renegotiation, may at the option of the renegotiating agency be renegotiated as a group and the powers of the War Contracts Price Adjustment Board may at such option be exercised with respect to such group, and in any such renegotiation, the principles set forth in subparagraph 3 (a) above will be applied.

4. The undersigned agrees that this request, after having been delivered to the renegotiating agency, cannot be withdrawn without the written consent of the renegotiating agency.

IN WITNESS WHEREOF, the undersigned has executed this request as of the ..... day of .... 194...

.....

By .....
(Title of Officer)

ATTEST:

.....
(Secretary)
(To be used if executed by a corporation.)

APPROVED:

.....
(Insert name and official title of person executing the approval in behalf of the government.)

NOTE: If the contractor is a corporation, the request will be accompanied by a certified copy of the resolution of the Board of Directors authorizing the request and the agreements therein contained. If a partnership or joint venture the request will be executed by all members of the partnership or joint venture.

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724. Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

724.1 Instructions for Preparation of Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

CONSTRUCTION CONTRACTORS, ARCHITECTS, AND ENGINEERS INFORMATION AND WORK SHEET FOR RENEGOTIATION.

Information indicated in parts I and II herein is required for renegotiation under the Renegotiation Act, as amended. Any part of this information which the contractor has submitted, either in the "Standard Form of Contractor's Report (for Construction Contractors,

Architects, and Engineers)" or in connection with a previous renegotiation, may be omitted, provided reference is made to the manner, time, and place of its submission. If any statements or information designated are inapplicable in a particular case, the contractor should so state and give the reason therefor. In financial statements all cents may be omitted. The contractor should so indicate if he prefers to discuss with the renegotiation authorities the methods of segregation of gross earnings and allocation of costs and expenses. In such cases, the contractor should submit all other information requested herein.

The contractor should certify that all information and data (subject to qualifications, if any, specifically set forth) are true and correct to the best of his knowledge and belief.

Part I

INSTRUCTIONS FOR PREPARATION OF EXHIBITS

The enclosed exhibits are provided for the contractor's use in this connection. Should he submit in some other form his income data separated as between renegotiable and nonrenegotiable business, these exhibits should be used as guides.

Exhibit I

For an interpretation of items entering into renegotiable and nonrenegotiable business, repectively, refer to "Standard Form of Contractor's Report (for Construction Contractors, Architects, and Engineers)," Instructions 3, 4, and 6.

Line 1. Gross Earnings.—Enter total dollar volume of all work done under prime contracts, subcontracts, and purchase orders and other earnings, segregated as indicated by the columnar headings. For lump-sum and unit-price contracts (column A) show total contract price. For cost-plus-fixed-fee contracts (column B) show total reimbursements and fees earned. On joint venture lump-sum and unit-price contracts enter contractor's proportionate share of the total contract price (column C). On joint-venture cost-plus-fixed-fee contracts enter his proportionate share of the reimbursable costs and fees (column C). (Joint ventures are renegotiated as separate entities.) Column D is to be used only by contractors who report for tax purposes on other than the completed contract basis, but who prepare this exhibit I on a completed contract basis.

Line 2. Job Costs.—Enter in each column the job costs applicable to the corresponding contract earnings entered on line 1. For cost-plus-fixed-fee contracts (column B) include both reimbursable and direct nonreimbursable costs. For joint-venture contracts (column C) show proportionate share of costs.

Lines 5, 8, and 9. General and Administrative Expenses; Other Income; Other Deductions.—Allocate to the classifications indicated for each column in accordance with the most equitable method in view of the particular situation.

Line 11. Rental Income From Owned Equipment (net).—Enter on this line in column E the renegotiable portion of the net amount

(gross less applicable costs and expenses) received or accrued from the rental of equipment owned by the contractor; in column F the nonrenegotiable portion of such net earnings; and in column G the sum of the amounts entered in columns E and F, respectively. If these amounts are significant, the contractor should support them by a separate schedule showing gross earnings from such rentals, distributed between renegotiable and nonrenegotiable business, and costs and expenses applicable to each classification, with resultant net earnings as shown in columns E, F, and G, respectively.

Line 12. Sales and Other Earnings.—Enter on this line in column E the renegotiable portion of the net income from sales and services not included in columns A to D, inclusive; in column F the nonrenegotiable portion of such income; and in column G the sum of the amounts entered in columns E and F, respectively. The contractor should support these amounts by a separate schedule showing net sales and/or income from services, cost of sales and/or services, expenses applicable to each classification, and resultant net profits, as shown in columns E, F, and G, respectively.

Lines 14, 15, 16, 17, and 18.—Amounts on these lines are to be entered in column G only.

Supporting Schedules. — Furnish supporting schedules as directed on the back of exhibits I and IA (also IB if applicable).

Part II

GENERAL INFORMATION

A. One copy each of the following:

1. Balance sheets as of the close of the year under review and each of the three (3) preceding years, and related analyses of surplus or net worth.
2. Income statement as regularly prepared, for the year under review.
3. Federal income and excess profits tax returns filed for the year under review.
4. Detailed or long form audit report, if available.

B. *Information relative to affiliates:*

1. A statement showing the names and addresses of the contractor's parent, subsidiary, and affiliated companies and organizations, with a brief description of the character of their business, the nature and extent of their affiliation, and an expression of the contractor's opinion as to whether or not, during the year under review, they had business subject to the Renegotiation Act, and as to which should be consolidated for purposes of renegotiation.

2. If the financial statements are submitted on a consolidated basis, similar financial statements for each subsidiary included in such consolidation.

3. The basis of setting intercompany prices (including rentals) when affiliates or subsidiaries are not consolidated.

4. A statement of sales and rentals to and purchases and rentals from subsidiaries and affiliates.

Instructions.—The terms "affiliates" and "affiliated companies and organizations" means all persons under the control of or controlling, or under common control with the contractor.

C. A statement or schedule, amplified by adequate explanations, with respect to each of the following:

1. Type and approximate value of any materials or other assistance received from the Government or prime contractors;

2. The effect of raw material exemptions and "excess inventory" calculations provided for in subsection (i) of the Act;

3. Sales of materials and rentals of equipment to subcontractors entering into repurchases from them;

4. Interdepartmental sales not eliminated;

5. Any basic changes during the year under review in accounting methods, depreciation rates, and/or methods of inventory valuation;

6. Volume of direct renegotiable earnings from contracts with the subsidiaries of Reconstruction Finance Corporation (Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Co. and Rubber Reserve Co.), and the amount of profits therefrom. (If profits on such earnings are not segregated on the books, best estimate should be given);

7. A brief description of any bonus, pension trust, or other employee compensation plans in effect during the year under review, with comment as to how they are applicable to personnel for which compensation data are specifically supplied (officers, highly paid employees, etc.), and showing the dates that such plans were adopted. State whether approval has been obtained from the Bureau of Internal Revenue.

8. The latest taxable year examined by the Bureau of Internal Revenue and any significant changes made in taxable income or invested capital as a result of examinations made by the Bureau since 1 January 1942;

9. Any changes in excess profits tax credit claimed or to be claimed under section 721 or 722 of the Internal Revenue Code;

10. If royalties in excess of $25,000 were paid or accrued during the year under review, the names of significant payees and amounts of payments. Similarly, if the contractor received royalties in excess of $25,000, the names of licensees and amounts received from each;

11. Any revaluation of assets or recapitalization during the year under review;

12. Stockholders owning over 10 percent of voting stock and stockholdings of officers and key executives;

13. Financial interest in any subcontractor, supplier of material, or any concern from which construction plant or equipment has been acquired or rented during the year under review;

14. If the reporting entity is a joint venture, a certified copy of the joint-venture agreement;

15. Schedule showing name, address, and amount paid or accrued to each person, other than full-time employees, for obtaining or attempting to obtain contracts with any of the Departments named in the Act;

16. Any other matters with particular reference to those factors set forth in section (a) (4) (A) of the 1943 Act.

Instructions.—Since each of the subjects listed above requires development in some detail for purposes of renegotiation, in order that full value can be given to the contractor's contribution to the conduct of the war, the contractor should give careful consideration to the preparation of his statements relative thereto. While such statements may be amplified at a meeting with representatives of the War Contracts Price Adjustment Board, it is desirable that they be presented in writing before such meeting.

EXHIBIT I

INCOME STATEMENT

Budget Bureau No. 49-R200.
Approval expires 12-31-44.

For the fiscal year ended ....., 194...

(Segregated as to renegotiable and nonrenegotiable business as defined under the Renegotiation Act)

Exact name of contractor ..... Address .....

We keep our books on the Cash ☐ Accrual ☐ basis; we report our operations for Federal Income Tax Purposes on the Completed Contract ☐ Percentage of Completion ☐ basis; this Exhibit I is prepared on the Completed Contract ☐ Percentage of Completion ☐ basis.

	Subject to Renegotiation					Nonrenegotiable Business	Total Business
	Lump Sum and Unit Price Contracts	Cost-Plus-Fixed-Fee Contracts	Joint Ventures (proportionate share)	Uncompleted Contracts at End of Year	Total Subject to Renegotiation		
	(Column A)	(Column B)	(Column C)	(Column D)	(Column E)	(Column F)	(Column G)
1. Gross earnings	$	$	$	$	$	$	$
2. Job costs							
3. Gross profit							
4. Percent gross profit to job cost	%	%	%	%	%	%	%
5. General and administrative exp.							
6. Operating profit							
7. Percent operating profit to gross earnings	%	%	%	%	%	%	%
8. Other income							
9. Other deductions:							
(a) State taxes measured by income							
(b) Other							
10. Net contract earnings							
11. Rental income from owned equipment (net)	x x x x x x	x x x x x x	x x x x x x	x x x x x x			
12. Income from sales for war-end and other earnings (net)	x x x x x x	x x x x x x	x x x x x x	x x x x x x			
13. Net profit before provisions for Federal taxes on income and for extraordinary reserves	x x x x x x	x x x x x x	x x x x x x	x x x x x x			
14. Provisions for Federal taxes on income (gross)	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	
15. Postwar refund of excess profits tax (credit)	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	
16. Net profits before extraordinary reserves	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	
17. Prov. for extraordinary reserves	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	
18. Net income	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	x x x x x x	$

16—68139-1

SUPPORTING SCHEDULES TO EXHIBIT I

Furnish all schedules checked (x) in the following list

☐ Exhibit IA or the equivalent.

☐ Schedule of direct nonreimbursable costs applicable to CPFF contracts. List the items and amounts included in job costs on line 2 in column B.

☐ Schedule of salaries and all other compensation paid or accrued during the year under review and for each of the 5 preceding years:

(*a*) to all officers, partners, and sole proprietors.

(*b*) to other individuals and organizations receiving $10,000 or more in the year under review. (List five highest only.)

Show for each individual or organization: Name, title, or relationship and total compensation.

☐ SCHEDULE OF DEPRECIATION:

If any accelerated depreciation and/or amortization of emergency facilities is included, show in each case amount and basis of computation.

☐ SCHEDULE OF OTHER INCOME:

List items, grouped by major classifications, included in total amount shown on line 8, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF STATE TAXES MEASURED BY INCOME:

List by States amounts of taxes (including franchise taxes) measured by income included on line 9*a*, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF OTHER DEDUCTIONS:

List items, grouped by major classifications, included in total amount shown on line 9*b*, column G. Explain fully the basis used in allocating to columns A to F inclusive.

☐ SCHEDULE OF CONTRACTS TERMINATED AND IN PROCESS OF TERMINATION:

List the contracts included in exhibit I which were terminated during the year under review and in process of termination at its close, showing for each (*a*) contract number, (*b*) interested Department or service, (*c*) contract earnings, (*d*) related costs.

☐ Reconciliation of exhibit I with Federal Income Tax Return.

☐ Reconciliation of exhibit I with profit and loss statement prepared from contractors' books.

EXHIBIT IA

(Detail of Exhibit I)

Budget Bureau No. 49-R308.
Approval expires 12-31-44.

Name of contractor .....

Address of contractor .....

	Column A	Column B	Column C	Column D	Column E	Column F	Column G
JOB COSTS:							
1. Materials used, less discounts	$	$	$	$	$	$	$
2. LABOR:							
(a) Direct, including foremen							
(b) Supervisory							
Total	$	$	$	$	$	$	$
3. Subcontracts							
4. CONSTRUCTION PLANT AND EQUIPMENT							
(a) Rentals paid to others	$	$	$	$	$	$	$
(b) Rentals for use of own equipment, per books							
Total	$	$	$	$	$	$	$
5. MISCELLANEOUS JOB COSTS:							
(a) Bond premium, net		$	$	$	$	$	$
(b) Insurance, net	$						
(c) Maintenance and repair of equipment							
(d) Gas, oil, and grease							
(e) Field office expense							
(f) Depreciation (describe)							
(g) Other							
Total	$	$	$	$	$	$	$
6. Total job costs	$	$	$	$	$	$	$
Explain basis of allocation:							
GENERAL AND ADMINISTRATIVE EXPENSES:							
7. Salaries of officers, partners, or owners	$	$	$	$	$	$	$
8. Other salaries							
9. Selling and advertising expenses							
10. Depreciation (describe)							
11. Other operating expenses							
12. Total general and administrative expenses	$	$	$	$	$	$	$
Explain basis of allocation:							

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SUPPORTING SCHEDULES TO EXHIBIT IA

Furnish all schedules checked (x) in the following list

☐ Schedule of work subcontracted, by classifications assigned to the columns in exhibit IA, showing names and addresses of subcontractors, types and amount of work subcontracted, totals to agree with amounts on line 3 (subcontracts).

☐

Budget Bureau No. 49–R197.1
Approval expires 12/31/44.

EXHIBIT IB

(Detail of Costs and Expenses)
By Contracts

Name of contractor .....

Address of contractor .....

	CONTRACT NUMBER								
JOB COSTS (exhibit I, line 2):									
1. Materials used, less discounts	$	$	$	$	$	$	$	$	$
2. Labor:									
(a) Direct, including foremen									
(b) Supervisory									
TOTAL									
3. Subcontracts									
4. Construction plant and equipment:									
(a) Rentals paid to others									
(b) Rentals for use of own equipment, per books									
TOTAL									
5. Miscellaneous job costs:									
(a) Bond premium, net									
(b) Insurance, net									
(c) Maintenance and repair of equipment									
(d) Gas, oil, and grease									
(e) Field office expense									
(f) Depreciation (describe)									
(g) Other									
TOTAL									
6. Total job costs									
GENERAL AND ADMIN. EXP. (exhibit I, line 5):									
7. Salaries of officers, partners, or owners									
8. Other salaries									
9. Selling and advertising expense									
10. Depreciation (describe)									
11. Other operating expenses									
12. TOTAL general and admin. expense	$	$	$	$	$	$	$	$	$

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SUPPORTING SCHEDULES TO EXHIBIT IB

(Exhibit IB will generally be used only when renegotiation is conducted on a completed contract basis)

FURNISH ALL SCHEDULES CHECKED (X) IN THE FOLLOWING LIST

☐ Breakdown of gross contract earnings by contracts to support the amount shown in each column on line 1 of exhibit I. For amounts in columns A to D inclusive show prime and subcontract number, department or agency (if a subcontractor, also name and address of prime contractor), description and location of work, amount. For amount in column F show name and address of client, location and description of work, amount.

☐ Breakdown of job costs by contracts to support the amounts shown on line 2 of exhibit I in columns A, B, C, D and F. Show itemization of job costs as carried on your books, including such items as labor, material, subcontracts, equipment, rentals, etc. (Exhibit IB.)

☐ Schedule of work subcontracted, by contracts, showing names and addresses of subcontractors, types and amounts paid for work subcontracted.

☐ Schedule of direct nonreimbursable costs. List by contracts, the items and amounts included in job costs on line 2 in column B of exhibit I.

EXHIBIT II

Budget Bureau No. 49-R300.
Approval expires 12/31/44.

COMPARATIVE STATEMENT OF INCOME

(In even thousands of dollars)

To be submitted only if the information required for renegotiation purposes has not been previously submitted.

Name of Contractor ..... Address .....

	Years ended						
	19.....	19.....	19.....	19.....	19.....	19.....	19.....
1. Gross earnings:							
a. Lump sum and unit price work	$	$	$	$	$	$	$
b. Cost-plus-fixed-fee work							
c. Other earnings (describe)							
TOTAL							
2. Job costs							
3. Gross profit							
4. Percent of gross profit to job costs							
5. General and administrative expenses							
6. Operating profit							
7. Percent of operating profit to gross earnings							
8. Other income							
9. Other deductions							
10. Net profit before provisions for Federal taxes on income and for extraordinary reserves							
11. Provision for Federal taxes on income (gross)							
12. Post-war refund of excess profits tax (credit)							
13. Net profit before extraordinary reserves							
14. Provisions for extraordinary reserves							
15. Net income per books	$	$	$	$	$	$	$

U. S. GOVERNMENT PRINTING OFFICE 16—40124-1

725. Agreement Extending Time for Completion of Renegotiation.

..... 194..

It is hereby stipulated and agreed by and between the United States of America and .....
a ..... with principal business office at ..... (hereinafter referred to as the "Contractor"), as follows:

(1) Renegotiation pursuant to the Renegotiation Act between the War Contracts Price Adjustment Board or its duly authorized representative and the Contractor with respect to amounts received or accrued by the Contractor for the Contractor's fiscal year ended ..... was commenced ..... 194...

(2) In accordance with the provisions of clause (B) of the second sentence of subsection (c)(3) of the Renegotiation Act, the time within which a determination of the amount of excessive profits, if any, derived by the Contractor from contracts with the Departments and subcontracts for the Contractor's fiscal year ended ..... may be made by agreement or order is hereby extended to and including ..... 194....

.....
(Name of Contractor)

by .....
(Title)

If a corporation add
(Corporate Seal)

ATTEST:

.....
Secretary

UNITED STATES OF AMERICA

by .....

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

[The next page is 761.]

Section 4

FORMS RELATING TO AGREEMENTS AND UNILATERAL DETERMINATIONS

741. Agreement Forms.

741.1 Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ..... day of ..... 194.., by and between the UNITED STATES OF AMERICA (hereinafter referred to as "the Government") and .....
.....,
* a corporation organized and existing under the laws of the state of .....,
* co-partners, doing business under the firm name of .....,
* a sole proprietor, doing business under the name of .....,
having its principal office at .....
..... (hereinafter referred to as "the Contractor").

1. *Profits to be Eliminated.* As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ..... Dollars ($.....) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended ....., 194.., (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.†

2. *Warranty.* This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. *Tax Credit Under Section 3806 of the Internal Revenue Code.* The Contractor represents that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. *Terms of Payment.* The Contractor agrees to pay to the Government the sum of ..... Dollars ($.....), being the amount determined in Article 1 hereof to be eliminated, as follows:

---

* Delete inapplicable language.

† If the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 of the Renegotiation Regulations, the following sentence will be added:

"The amount of profits to be eliminated hereby has been determined by taking into consideration the application of the $500,000 or the $25,000 limitation set forth in subsection (c) (6) of the Renegotiation Act as interpreted by paragraph 348.3 of the Renegotiation Regulations."

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....** All unpaid ..... installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment due under this agreement from and after the due date thereof, whether original or accelerated.

5. *Additional Profits to be Eliminated.* If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to ..... of a check payable ..... to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. *Covenant Against Contingent Fees.* The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. *Officials Not To Benefit.* No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. *Discharge of Liability.* This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. *Renegotiation Rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. *Execution of Agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in ..... counterparts as of the day and year above written.

(Corporate Seal if a Corporation)

By .....
(Title of Officer)

** If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, insert here: "to the extent of $..... and by check to the order of and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of $....."

ATTEST:

.....
Secretary

(To be used if executed by a corporation)

UNITED STATES OF AMERICA
By .....
(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

Each exhibit attached hereto is to be initialed for identification by the persons signing on behalf of the Contractor.

A duly certified copy of the resolution of the Board of Directors of the Contractor, if a corporation, authorizing the execution and delivery of this agreement is to be attached hereto.

741.2 Variations in the Standard Form.

(1) *Forward Pricing.* When agreement cannot be reached upon specific price reductions, use may be made of the following clause:

"The Contractor agrees that so long as it shall have contracts and subcontracts which are by law subject to renegotiation, it will from time to time adjust its prices under such contracts and subcontracts to eliminate the accumulation of profits thereunder regarded by the Contractor as excessive. Within twenty days after the close of that quarter of the Contractor's current fiscal year in which the Contractor has received a fully executed counterpart of this agreement, the Contractor agrees to file with .....
.....
.....
a report setting forth the price reductions, if any, made during all then expired quarters of such current fiscal year applicable to its contracts and subcontracts subject to renegotiation. The Contractor further agrees to file a similar report within twenty days following each subsequent quarter of its current fiscal year setting forth its price reductions, if any, made during such quarter. Each such report may be in such general terms or in such detail as the Contractor deems necessary to an intelligent appraisal thereof, but shall set forth, if feasible, the unit prices before and after each such reduction, and shall set forth an estimate of the aggregate reduction effected thereby for such fiscal year under contracts and subcontracts subject to renegotiation; and shall include, if available, a summary profit and loss statement for the period covered by the report. It is understood and agreed that price reductions will be taken into consideration in any renegotiation which may hereafter be conducted with the Contractor with respect to its current fiscal year, but that, with respect to periods subsequent to the date of this agreement, the obligations of the Contractor under this article will not be deemed to be satisfied by refunds or retroactive price reductions.

"Failure on the part of the Contractor to comply fully with this article shall not constitute grounds for reopening this agreement or for setting aside the discharge provided for in Article 8 hereof."

(2) *Variations in Article 2 of the Standard Form.* When the renegotiation covers a parent and subsidiaries unless all parties sign the agreement the following clause should be added to Article 2 of the standard form of agreement by insertion after the first paragraph of Article 2:

"Exhibit B annexed hereto and made a part hereof contains a complete list, as represented by the Contractor, of its subsidiaries, all of which are consolidated with the Contractor for the purposes hereof, except such, if any, as may be expressly excluded from such consolidation, as indicated by proper notation on said Exhibit B. Also noted on Exhibit B is the

part, if any, of the profits to be eliminated which is allocated to each subsidiary so consolidated with the Contractor. The part unallocated to subsidiaries is allocated to the Contractor. Each such subsidiary to which is allocated any portion of the profits to be eliminated has duly executed said Exhibit B, thereby agreeing to pay to the Government such portion of the profits to be eliminated which has been allocated to it. All representations and warranties made herein by the Contractor shall be applicable to each such subsidiary and each such subsidiary shall be bound by all representations and warranties made with respect to it. Article 8 of this agreement shall likewise be applicable to each such subsidiary as though it were named herein as the Contractor."

Such exhibit may take the following form:

Exhibit B

List of, Allocation of Profits to be Eliminated among, and Agreement by, Subsidiaries of Contractor Included in the Renegotiation

1. The name, state of incorporation of all subsidiaries, and the dollar amount of profits to be eliminated, if any, which is allocable to each subsidiary, are as follows:

Name and State of Incorporation	Allocation of Profits to be Eliminated (Note 1)
.....	.....
.....	.....
.....	.....
.....	

Note 1: If no amount of excessive profits is allocated to a particular subsidiary, insert the word "none" opposite the name of such subsidiary.

2. Each of the undersigned subsidiaries hereby approves and adopts the agreement of which this Exhibit B is a part and agrees to pay to the Government the amount of profits to be eliminated which is allocated to it as hereinabove set forth, and any additional profits eliminated pursuant to the provisions of Article 5 of this agreement resulting from a refund to or the reduction in a liability of such subsidiary, provided, however, that payments by the Contractor pursuant to such agreement shall be applied ratably in satisfaction of the liability of the Contractor and the liability of each of the undersigned. Upon the failure of the Contractor to make when due, either as provided herein or by acceleration, any payment provided by this agreement each of the undersigned subsidiaries agrees to pay to the Government the amount of the profits to be eliminated agreed to be paid by it, to the extent not theretofore paid by the Contractor, together with interest thereon after default as provided in Article 4 of this agreement.

IN WITNESS WHEREOF, the undersigned have executed this agreement as of the day and year of execution of the agreement of which this Exhibit B is a part.

Seal

.....

By.....
(Title of Officer)

ATTEST:

.....
Secretary

Seal

.....

By.....
(Title of Officer)

ATTEST:

.....
Secretary

(3) *Variations in Article 3 of the Standard Form.*

(a) If the contractor has not filed his Federal income or income and excess profits tax returns, or has filed the return but has not included in income as reported therein the profits to be eliminated, the following provisions should be used in lieu of the provisions of Article 3 as contained in the standard form of agreement:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code: The amount of profits agreed in Article 1 hereof to be eliminated has not been included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and, accordingly no tax credit under Section 3806 of the Internal Revenue Code is allowed against the amount of such profits to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of profits agreed in Article 1 hereof to be eliminated, or any part thereof, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(b) In some instances, a contractor will have included in income as reported in his tax returns less than all of the profits to be eliminated. In such a case Article 3 should be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor represents that of the profits agreed in Article 1 hereof to be eliminated $..... were included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of the profits agreed in Article 1 hereof to be eliminated and which were excluded from income in the Contractor's income tax return (or income and excess profits tax returns) for said fiscal year, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(c) In the case of a partnership, the tax credit applicable against the amount of the profits to be eliminated is the aggregate of the credits to which each of the partners is entitled. Accordingly, in such a case Article 3 may be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. Each of the partners comprising the Contractor represents that his proportionate share of the profits, the amount of which is agreed in Article 1 hereof to be eliminated, was included in his income for his taxable year in which said fiscal year ended in computing his total tax in his Federal income tax return for said taxable year. Each of such partners has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which his taxes for such taxable year under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The aggregate of the amounts, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated."

(4) *Anti-Discrimination Clause.* Whenever a renegotiation agreement executed under the Act expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause then the agreement shall include the following provision:

"Anti-discrimination.—(a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

"(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work, to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract."

(5) *Variations in Article 4 of the Standard Form.*

(a) If the profits to be eliminated are to be paid in installments, and the amount of the tax credit has not been ascertained, Article 4 may be drafted to read as follows:

"4. Terms of Payments. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3, as follows:

(a) $....., less the pro rata portion of the tax credit applicable thereto, within ten days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later; and

(b) $....., less the pro rata portion of the tax credit applicable thereto, on or before ..... or the due date of the first scheduled payment, whichever shall be later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(b) If the amount of the tax credit has been ascertained before the agreement is drawn, Article 4 may be drafted to read as follows:

"4. Terms of Payment. The Contractor agrees to pay to the Government the sum of ..... ($.....), being the difference between the amount agreed in Article 1 hereof to be eliminated and the amount of the tax credit referred to in Article 3 which has been determined to be applicable thereto, as follows:

$..... within ten days after the Contractor shall have received a fully executed counterpart of this agreement, and

$..... on or before .....; and

$..... on or before .....

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of

* If any part of the profits to be eliminated were derived from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the RFC Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(6) *Clause to Be Used in Connection with Renegotiation on a Completed Contract Basis in Certain Cases.* Whenever renegotiation is conducted on a completed contract basis pursuant to the request of the contractor in the form therefor which is set forth in paragraph 723, the following clause will be inserted in the renegotiation agreement:

"Renegotiation of Construction Contracts and Subcontracts on Completed Contract Basis. At the request of the contractor and with the consent of the renegotiating agency, the renegotiation concluded by this agreement was conducted on a completed contract basis with respect to the construction contracts and subcontracts of the contractor completed within said fiscal year. A copy of said request dated ..... is attached hereto as Exhibit ....., incorporated herein by reference as though set forth herein, and the contractor hereby agrees to be bound by all of the undertakings and conditions set forth in said request."

(7) *Clause Relating to Waiver of CPFF Claims.* When appropriate, the following clause may be used.

"There have been allowed as costs against renegotiable business in the renegotiation for said fiscal year amounts for which claims for reimbursement under cost-plus-fixed-fee contracts have been made and disallowed by the Government. As part of Exhibit A attached hereto, there is set forth a description of such claims for reimbursement, stating the amount of each claim and the amount thereof which has been allowed as a cost against renegotiable business for the purposes of this agreement. The contractor hereby waives and releases such claims for reimbursement and all rights it may now or hereafter have for the collection or reimbursement of said disallowed items to the extent that amounts under such claims have been allowed as costs against renegotiable business."

In addition, if such clause is used, the claims and amounts being waived should be shown as a part of Exhibit A.

741.3 Contents of Exhibit "A" to the Standard Form of Agreement. Exhibit "A" referred to in the Standard Form of Agreement shall contain, as a minimum, the following financial data and information:

(1) The amount of net sales under fixed price contracts in the aggregate and segregated as between renegotiable and non-renegotiable business.

(2) The net profit on each such amount of fixed price business before Federal taxes on income.

(3) The aggregate amount of billings under cost-plus-fixed-fee contracts subject to renegotiation (i. e., costs plus gross fees).

(4) The net fees earned under renegotiable cost-plus-fixed-fee contracts before Federal taxes on income.

(5) The amount of adjustment in the profits to be eliminated on account of taxes other than Federal taxes measured by income.

(6) The amount of profits to be eliminated shown separately as to fixed price and cost-plus-fixed-fee business. If any part of the profits to be eliminated were derived from prime contracts with RFC subsidiaries, such part of such profits shall be indicated.

The form of the exhibit and the manner in which such financial data and information shall be shown shall be within the discretion of the Department which has conducted the renegotiation. In the discretion of such Department, any additional financial data or information may be included in Exhibit "A." (See paragraph 741.2 subdivision (7).)

741.4 **Contents of Exhibit "B" to the Standard Form of Agreement.** See paragraph 741.2 subdivision (2).

741.5 **Contents of Exhibit "C" to the Standard Form of Agreement.** See paragraph 505.

Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Mr. Joseph M. Dodge, Chairman
(War Department)
Room 3D 573, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73173

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 6, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Comdr. A. G. Rydstrom
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 25, D. C.

Tel. Executive 3340
Ext. 606 or 607

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500
Ext. 71783

791.3 **Office of General Counsel.**

War Contracts Price Adjustment Board
Attention: Mr. W. James MacIntosh, General Counsel
Room 3D 630, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 72191

791.4 **Assignment Office.**

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C.
Tel. Republic 6700
Ext. 73678

791.5 **Pentagon Office.**

Room 3E 592, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73636

792. **Departmental Price Adjustment Boards.**

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 6, D. C.
Tel. Republic 7400
Ext. 5169 or 62729

War Department Power Procurement Officer
Attention: Major George P. Steinmetz, Deputy,
Utilities Price Adjustment Section
Room 5004, New War Dept. Building
Washington 25, D. C.
Tel. Republic 6700
Ext. 79994 or 76210

793.2 Field Offices of Price Adjustment Sections.

(1) *Army Air Forces:*

39 South La Salle Street, Chicago 3, Illinois,
Tel. Randolph 9720.

Enquirer Building, 617 Vine Street, Cincinnati, Ohio,
Tel. Cherry 8320.

4614 Prospect Avenue, Cleveland 3, Ohio,
Tel. Endicott 7200.

8505 West Warren Avenue, Detroit 32, Michigan,
Tel. Hogarth 8730.

3636 Beverly Boulevard, Los Angeles 54, California,
Tel. Drexel 7081.

67 Broad Street, New York 4, New York,
Tel. Whitehall 4-1600.

420 West Douglas Avenue, Wichita 1, Kansas,
Tel. Wichita 5-4621.

(2) *Corps of Engineers:*

50 Whitehall Street, Atlanta 2, Georgia,
Tel. Jackson 6180.

101 East Fayette Street, Baltimore 2, Maryland,
Tel. Plaza 8060.

75 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 8100.

20 North Wacker Drive, Chicago 6, Illinois
Tel. Randolph 1311.

1120 Huntington Bank Building, Columbus 16, Ohio,
Tel. Main 6481.

Santa Fe Building, 1114 Commerce Street,
Dallas 2, Texas,
Tel. LD 930.

270 Broadway, New York 7, New York,
Tel. Barclay 7-1616.

Farm Credit Building, 19th and Douglas,
Omaha 1, Nebraska,
Tel. Webster 5966.

351 California Street, San Francisco, California,
Tel. Garfield 6900.

(3) *Ordnance Department:*

700 Frank Nelson Building, Birmingham 1, Alabama,
Tel. Birmingham 4-7511.

140 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 9800.

38 South Dearborn Street, Chicago 3, Illinois,
Tel. Franklin 4900.

Big Four Building, Cincinnati 1, Ohio,
Tel. Cherry 3800.

1006 Terminal Tower Building, Cleveland 13, Ohio,
Tel. Main 0670.

1832 National Bank Building, Detroit 32, Michigan,
Tel. Randolph 9360.

Room 1815—80 Broadway, New York 5, New York,
Tel. Hanover 2-7300.

150 South Broad Street, Philadelphia 2, Pennsylvania,
Tel. Locust 4020.

1202 Chamber of Commerce Building, Pittsburgh 9, Pennsylvania,
Tel. Grant 5966.

1238 Mercantile Building, Rochester 4, New York.
Tel. Stone 3203.

3663 Lindell Boulevard, St. Louis 8, Missouri,
Tel. Jefferson 7380.

100 McAllister Street, San Francisco 1, California.
Tel. Underhill 3306.

95 State Street, Springfield 3, Massachusetts.
Tel. 7-0211

(4) *The Quartermaster General:*

1 State Street, Boston 9, Massachusetts,
Tel. Lafayette 3712.

333 North Michigan Avenue, Chicago 1, Illinois.
Tel. Franklin 5910.

521 Fifth Avenue, New York 17, New York,
Tel. Murray Hill 2-2622.

520 Kohl Building, Montgomery and California Streets, San Francisco 4, California,
Tel. Exbrook 7467.

16th Floor Woodside Building, Greenville, South Carolina,
Tel. 7140.

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 6, D. C.
Tel. Republic 7400.
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
21st Floor
100 West Monroe Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61468.

(2) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(3) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 5-3851.

(4) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 916, 610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 3860
Ext. 372-3.

(5) Office of the Under Secretary of the Navy
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Tucker 1351

794.3 **Price Revision Division.**

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. **Related Offices.**

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. **War Department Patent Royalty Adjustment Offices.**

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Chief, Legal Division
Office of the Chief of Transportation
Room 3A 724, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3556

Chief, Contracts and Claims Branch
Office of the Chief of Engineers
Room 3213, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 78253

Chief, Patent Section, Legal Branch
Office of the Chief of Ordnance
Room 4E 330, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2748

Patents and Inventions Counsel, Legal Division
Office of the Chief Signal Officer
Room 4D 331, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3702

Chief, Patent Section, Legal Branch
Office of the Chief of the Chemical Warfare Service
Room 1007, T-7
Gravelly Point
Virginia

Tel. Republic 6700
Ext. 2826

Chief, Patent Section, Legal Branch
Office of the Quartermaster General
Room 2442, Tempo B
Washington 25, D. C.

Tel. Republic 6700
Ext. 4294

The Patent Representative
Office of the Surgeon General
Room 419, Maritime Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79369

797. **Reconstruction Finance Corporation Price Adjustment Sections.**

797.1 **Headquarters.**

Reconstruction Finance Corporation
Price Adjustment Board
Lafayette Building,
811 Vermont Avenue, N. W.
Washington 25, D. C.
Tel. Executive 3111
Ext. 8 or 48

797.2 **Field Offices of Price Adjustment Sections.**

Healey Building, Atlanta 3, Georgia,
Tel. Main 5612

Comer Building, Birmingham 3, Alabama,
Tel. Birmingham 4-2661

40 Broad Street, Boston 9, Massachusetts,
Tel. Capitol 4070

Wilson Building, 109 West Third Street, Charlotte 1, N. C.,
Tel. Charlotte 3-7161

208 S. LaSalle Street, Chicago 4, Illinois,
Tel. State 0800

Federal Reserve Bank Building, Cleveland 1, Ohio,
Tel. Main 8515
Night, Main 8518

Cotton Exchange Building, Dallas 1, Texas,
Tel. LD 171 or
Riverside 6751

Boston Building, Denver 2, Colorado,
Tel. Alpine 0415

607 Shelby Street, Detroit 26, Michigan,
Tel. Cherry 8300

P. O. Box 177, Power Block, Helena, Montana,
Tel. Helena 481

Rusk Building, 723 Main Street, Houston 2, Texas,
Tel. Charter 4-6711

Western Union Building, Jacksonville 2, Florida,
Tel. Jacksonville 5-1650

Federal Reserve Bank Building, Kansas City 6, Missouri,
Tel. Victor 3113

Pyramid Building, Little Rock, Arkansas,
Tel. Little Rock 4-0254

Pacific Mutual Building, Los Angeles 14, California,
Tel. Michigan 6321

Lincoln Bank Building, 421 W. Market Street, Louisville 2, Kentucky,
Tel. Wabash 6771

McKnight Building, Minneapolis 1, Minnesota,
Tel. Geneva 8601

Nashville Trust Company Building, Union Street, Nashville 3, Tennessee,
Tel. LD 48 or 5-2182

Union Building, 837 Gravier Street, New Orleans 12, Louisiana,
Tel. Canal 2701

Federal Reserve Bank Bldg., 33 Liberty Street, New York 5, N. Y.,
Tel. Rector 2-8100

Cotton Exchange Building, Oklahoma City 2, Oklahoma,
Tel. LD 647 or 2-8541

Woodmen of the World Bldg., Omaha 2, Nebraska,
Tel. Jackson 8200

1528 Walnut Street, Philadelphia 2, Pennsylvania,
Tel. Kingsley 1500

Pittock Block, Portland 5, Oregon,
Tel. Atwater 6401

Richmond Trust Building, 7th and Main Streets, Richmond 19, Virginia,
Tel. Richmond 3-6741

Landreth Building, 320 N. Fourth Street, St. Louis 2, Missouri,
Tel. Garfield 3750

Dooly Building, Salt Lake City 1, Utah,
Tel. Salt Lake City 5-7493

Alamo National Building, San Antonio 5, Texas,
Tel. Cathedral 1461

200 Bush Street, San Francisco 4, California,
Tel. Exbrook 6206

Dexter Horton Building, Seattle 4, Washington,
Tel. Main 1080

Columbia Building, Spokane 8, Washington,
Tel. Main 5111

798. War Department Power Procurement Officer Price Adjustment Sections.

798.1 Headquarters.

Utilities Price Adjustment Section,
Office, Chief of Engineers,
Attention: Major George P. Steinmetz, Chief,
5004 New War Department Building,
Washington 25, D. C.

Tel. Republic 6700
Ext. 79994 or 76210

798.2 Field Offices of Price Adjustment Sections.

Commanding General, First Service Command,
Office, Service Command Engineer,
Attention: Mr. W. K. Lewellen,
808 Commonwealth Avenue,
Boston 15, Massachusetts.

Tel. Beacon 1300
Ext. 430

Commanding General, Second Service Command,
Office, Service Command Engineer,
Attention: Major N. H. Davidson,
270 Broadway,
New York 7, New York.

Tel. Barclay 7-1616

Commanding General, Third Service Command,
Office, Service Command Engineer,
Attention: Mr. H. C. Fleming,
101 East Fayette Street,
Baltimore 2, Maryland.

Tel. Plaza 8060

Commanding General, Fourth Service Command,
Office, Service Command Engineer,
Attention: Major R. B. Lapsley,
P. O. Box 4114,
Atlanta, Georgia.

Tel. Jackson 6180
Ext. 85

Commanding General, Fifth Service Command,
Office, Service Command Engineer,
Attention: Major L. F. Dabe,
Building 62, Fort Hayes,
Columbus 18, Ohio.

Tel. Columbus 2171
Ext. 635

Commanding General, Sixth Service Command,
Office, Service Command Engineer,
Attention: Capt. V. A. Thieman,
20 No. Wacker Drive,
Chicago, Illinois.

Tel. Randolph 1311

Commanding General, Seventh Service Command,
Office, Service Command Engineer,
Attention: Major R. H. Bradford,
Federal Building, 15th & Dodge Streets,
Omaha, Nebraska.

Tel. Jackson 7900
Ext. 233

Commanding General, Eighth Service Command,
Office, Service Command Engineer,
Attention: Major D. W. Reeves,
Santa Fe Building,
Dallas 2, Texas.

Tel. LD 930
Ext. 771

Commanding General, Ninth Service Command,
Office, Service Command Engineer,
Attention: Major W. C. Sadler,
Fort Douglas, Utah.

Tel. Fort Douglas 5-6611

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CHAPTER VIII

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(*e*) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation, the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the errors alleged.

(*f*) A prayer, setting forth relief sought by the petitioner.

(*g*) The signature of the petitioner or that of hs counsel. (See Rule 4.)

(*h*) A verification by the petitioner in accordance with the applicable provision of subsection (h) of Rule 6.

(*i*) A copy of the order of the Board or of the Secretary, as the case may be, determining the amount of excessive profits, which order forms the basis for the initiation of the proceeding, shall be appended to the petition. If a statement has been furnished to the petitioner by the Board or the Secretary setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

III. Any Claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under Rule 14, or in an amendment thereto filed under Rule 17 at or before the time of the hearing.

IV. With respect to the matter covered by Rule 60, attention is directed to section 403 (e) (1) of the Renegotiation Act.

807. **Legal Rate of Interest in Absence of Agreement—District of Columbia.** "The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: Provided, That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum." (Mar. 3, 1901, 31 Stat. 1377, ch. 854, 1178; July 1, 1902, 32 Stat. 610, ch. 1352.) (See D. C. Code Sec. 28-2701.)

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Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Vegetable seeds	Not processed beyond the form or state at which they may be used as seeds
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap sold by dealers or brokers;

[**Comment**: The exemption of iron scrap and steel scrap as a standard commercial article applies only to dealers and brokers in iron scrap and steel scrap and is not to be construed as affecting, in any way, users of iron scrap or steel scrap, in particular, manufacturers of iron or steel or processors making iron or steel products who may produce and sell iron scrap or steel scrap as a by-product in the course of their operation. Neither does the exemption cover dealers in secondhand iron and steel machinery, equipment or facilities which are sold for re-use in any way other than as scrap.]

(b) Refined sugar (cane or beet);

(c) Textile bags (made of burlap or cotton);

(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.

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SUPPLEMENT RR-4

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS
for fiscal years ending after June 30, 1943

9 September 1944

SUMMARY OF IMPORTANT AMENDMENTS

The amendments made by this revision are summarized below. The principal changes are:

1. **Renegotiation on a Completed Contract Basis.** Addition of subsection (3) to RR 301.3 providing for an exclusion of amounts received or accrued and costs paid or incurred included in a previous renegotiation for which a different method of accounting was used.

2. **Segregation With Respect to Prime Contracts With Reconstruction Finance Corporation Subsidiaries.** Amendment of RR 323 to provide that no such segregation of excessive profits is necessary if amounts received or accrued under prime contracts with Reconstruction Finance Corporation subsidiaries did not exceed $50,000. See also RR 502.5 (1).

3. **Profits from Increment in Value of Excess Inventory.** Addition to RR 344.4 (2) (c) allowing a Department to permit, in certain instances, a deviation from the monthly basis of accounting.

4. **Exemptions.** Revisions of RR 352.2 relative to exemption from renegotiation of certain contracts for the purchase or lease of vessels and their equipment (as in bareboat charters) and an additional revision limiting the exemption in this paragraph to contracts and subcontracts under which the price is a fixed or determinable amount at the time the contract or subcontract is entered into.

5. **Interest.** Addition of subsection RR 422.4 (2) relative to interest in cases of default.

6. **Federal Income Tax Credit.** Addition of RR 442.5 relative to determination of federal tax credit for a sole proprietor, a partner or a joint venturer in community property states when excessive profits were included in the income of a spouse.

7. **Allocation of Excessive Profits Elimination for Federal Tax Purposes.** Revision of RR 444 relative to basis of allocation of excessive profits to taxable years.

8. **Raw Material Exemption.** Certain additions at paragraph RR 841.

9. **Standard Commercial Articles Exemption.** Certain additions at paragraph RR 845.

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8
Tuesday, August 15, 1944 9 Federal Register 9907	Changes and additions in Renegotiation Regulations contained in Revision 9.

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

OVER→

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included immediately in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
131—132	131—132	(1) Revision of paragraph 132.2 to include the War Department Power Procurement Officer. (2) Revision of paragraph 133.2 to substitute Office of the General Counsel, Navy Department, for Procurement Legal Division, Office of the Under Secretary of the Navy.
303—304	303—304	Change in Table of Contents for Chapter III.
313—314	313—314	Addition to paragraph 301.3 of subdivision (3) relating to treatment of amounts received or accrued and costs paid or incurred included in a previous renegotiation for which a different method of accounting was used.
325—326	325—326	Revision of paragraph 323 to provide that segregation of excessive profits with respect to prime contracts with RFC subsidiaries is not necessary when amounts received or accrued under such prime contracts did not exceed $50,000.
347B—347C	347B—347C	Revision of paragraph 344.4 (2)(c) allowing a Department to permit in certain instances a deviation from the monthly basis of treating excess inventory.
351—352	351—351B	Revision of paragraph 352.2 relative to exemption from renegotiation of certain contracts for the purchase or lease of vessels and their equipment, and addition of subparagraph (2) limiting the exemption under paragraph 352.2 to contracts and subcontracts under which the price is a fixed or a determinable amount at the time the contract or subcontract is entered into.
355—356	355—356	(1) Correction of cross reference in paragraphs 356.2 (1)(b) and (c). (2) Addition of paragraph 356.3 to provide a cross reference to an exemption of public utilities subcontracts.
383—383A	383—383A	In second sentence of paragraph 381.4 (3), the word "are" is changed to the words "have been."
387D—387E	387D—387E	Paragraph 388.1 (3) amended to provide the allowance of royalties permitted to be paid under the order rather than the amount fixed in the order.
401—402	401—402	Change in Table of Contents for Chapter IV.
421—422	421—422	Revision of paragraph 422.4 relative to interest in cases of default.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
443—444	443—445	(1) Addition of paragraph 442.5 relative to Federal tax credit for a sole proprietor, a partner or a joint venturer, if a portion of the excessive profits was reported in the return of the spouse. (2) Revision of paragraph 444 with reference to allocation of excessive profits to taxable years.
513—514	513—513B	(1) Addition to paragraph 502.4 of subparagraph (4) pertaining to form of tax credit clause in case of a partnership. (2) Revision of paragraph 502.5 (1) to provide that separate determination of profits attributable to RFC prime contracts is not necessary if amounts received or accrued under such prime contracts did not exceed $50,000.
703	703	Change in Table of Contents for Chapter VII.
759—759C	759—759C	Revision of paragraph 723 with reference to change in contents at paragraphs 1. (b) and 3. (b) of Contractor's Request for Renegotiation on Completed Contract Basis.
765—765A	765—765A	Revision of footnote on page 765A with reference to excessive profits derived from prime contracts with RFC subsidiaries.
765D—765E	765D—765E	Revision of footnote on page 765E with reference to excessive profits derived from prime contracts with RFC subsidiaries.
767B—767F	767B—767F	(1) Revision of footnote to paragraph 746.3 with reference to excessive profits derived from prime contracts with RFC subsidiaries. (2) Revision of footnote to paragraph 747.2 with reference to excessive profits derived from prime contracts with RFC subsidiaries. (3) Revision of footnote to paragraph 748.2 with reference to excessive profits derived from prime contracts with RFC subsidiaries.
777—777E	777—777E	(1) Revision of Form SPRA I-B appearing at paragraph 751.5. (2) Revision of Form SPRA I-BB appearing at paragraph 751.6. (3) Revision of Form SPRA I-C appearing at paragraph 751.7. (4) Revision of Form SPRA I-CC appearing at paragraph 751.8.
791—794	791—794	(1) Substitution in paragraph 791.2 of Brig. General Albert J. Browning as Chairman of the War Contracts Price Adjustment Board in place of Mr. Joseph M. Dodge. (2) Substitution in paragraph 791.2 of Mr. Kenneth F. Clark as member of the War Contracts Price Adjustment Board in place of Commander A. G. Rydstrom. (3) Substitution in paragraph 791.3 of Mr. Frederick W. R. Pride as General Counsel of the War Contracts Price Adjustment Board in place of Mr. W. James MacIntosh. (4) Minor changes in addresses set forth in paragraph 792.

OVER→

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
795B—796	795B—796	Substitution throughout paragraph 794.2 of Office of the General Counsel, Navy Department, in place of Office of the Under Secretary of the Navy.
797B—797D	797B—797D	(1) Elimination of the words "Price Adjustment Sections" from the heading of paragraph 798. (2) Elimination of the words "of Price Adjustment Sections" from the heading at paragraph 798.2. (3) Addition of paragraph 799 providing for the inclusion of the Pacific Coast Division of the War Shipping Administration Price Adjustment Board.
845—846	845—846	Addition to the raw material exemptions listed at paragraph 841 of Quartz Crystal, raw and Zeolites derived from Glauconite.
849—850	849—850	Revision of the list of Standard Commercial Article Exemptions at paragraph 845 to amend item (a) and add items (e), (f), (g) and (h).
1001—1002	1001—1002	Reference inserted to Supplemental Index.
1057	1057—1063 (inclusive)	Supplemental Index inserted relating to material in Revisions 7 to 10, inclusive.

★When you have filed these pages, place this instruction letter in the back of your binder.

Section 3

ORGANIZATION AND FUNCTIONS OF THE PRICE ADJUSTMENT BOARDS AND SECTIONS

130. Statutory Authority. The authority and discretion to administer the Renegotiation Act of 1943 is conferred upon the War Contracts Board with power of delegation (see subsection (d) of the 1943 Act in paragraph 801.4).

131. War Contracts Price Adjustment Board.

131.1 Functions. The War Contracts Price Adjustment Board has authority to administer the Renegotiation Act of 1943, including authority over agreements, unilateral determinations of excessive profits and exemptions. The Board has 6 members, of whom 4 constitute a quorum, and the Board may act by a majority of a quorum.

131.2 Seal. The seal of the Board shall be judicially noticed. A facsimile is set forth below:

131.3 Delegations. The Board has power to delegate any of its authority to the Secretary of a Department, who may redelegate to such officers or agencies of the United States as he may designate, with right of redelegation. There is set forth below the organization for renegotiation in the various Departments having renegotiation authority. Delegations by the War Contracts Board to the Secretaries of the various Departments are set forth in paragraph 821.1.

131.4 Jurisdiction. The Board may, by regulation, or otherwise determine the character of cases to be conducted initially by the Board itself, those to be conducted by its officers or the officers utilized by it, and those to be conducted by the various officers and agencies to which the Board's powers have been delegated. (Subsection (d) (5) of the 1943 Act, see paragraph 801.4.) Renegotiation will initially be conducted by the Departments in all cases, except for instances, if any, in which the Board may determine otherwise. (See paragraph 200 and following.) The powers, duties and discretion of the Board to conduct renegotiation were delegated to the Secretaries of the Departments on February 26, 1944. (See paragraph 821.1.)

131.5 **Review by the Board.** The Board may, in its discretion, either upon its own motion or at the request of the contractor or subcontractor, review any determination by order made by any officer or agency to which its powers have been delegated. The Board's determination may be less than, equal to, or greater than the determination reviewed. (Subsection (d) (5) of the 1943 Act, see paragraph 801.4 and also Chapter VI, Section 2.)

132. **War Department Organization.**

132.1 **Organization and Functions of War Department Price Adjustment Board.** The Renegotiation Division has been established by the Commanding General, Army Service Forces, as a Staff Division under the supervision of the Director of Materiel. The War Department Price Adjustment Board has been organized within the Division. The Chairman and members of the Board are appointed by the Commanding General, Army Services Forces, with the approval of the Under Secretary of War. The Chairman serves also as Director of the Renegotiation Division.

132.2 **Organization and Functions of War Department Price Adjustment Sections.** There has been established a Price Adjustment Section in each of the Technical Services of the Army Service Forces and in the Army Air Forces. The Army Services Forces have Sections in the Technical Services of Chemical Warfare, Engineers, Ordnance, Quartermaster, Signal Corps, Surgeon General, and Transportation. With the exception of the Price Adjustment Section of Chemical Warfare, located in Baltimore, the main Sections of the Technical Services are located in Washington. Headquarters for renegotiation in the Army Air Forces are shared by Washington and Wright Field, Dayton, Ohio. District Price Adjustment Sections have been established by the Technical Services and the Army Air Forces at various procurement centers, and this decentralization allows renegotiation to be conducted close to the location of the company involved. In the office of the War Department Power Procurement Officer, there has been established an Utilities Price Adjustment Section.

133. **Navy Department Organization.**

133.1 **Navy Price Adjustment Board.** The Secretary of the Navy has established the Navy Price Adjustment Board to conduct renegotiation under the supervision of the Chairman of the Board. The Board has four divisions located in Washington, New York, Chicago and San Francisco, respectively.

133.2 **Services and Sales Renegotiation Section.** In the Office of the General Counsel, Navy Department, there is established a Services and Sales Renegotiation Section which specializes in the renegotiation of sales agents and brokers. This section has its headquarters in Washington and divisional offices in Washington, New York, Chicago and Los Angeles.

134. **Treasury Department Price Adjustment Board.** The Treasury Department has established the Treasury Department Price Adjustment Board in the Procurement Division. The office of the Board is located in Washington.

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such construction contracts and subcontracts and the profits derived therefrom as though, with respect to them, the contractor had used the completed contract basis of accounting in keeping his books and in making his Federal income tax return. The $500,000 fiscal-year exemption provided in subsection (c) (6) of the Renegotiation Act, the interpretation relating to the $500,000 "floor" as set forth in paragraph 348.3, as well as all other provisions of the 1943 Act, will be applied in like manner. The contracts or subcontracts renegotiated on the completed contract basis are subject to such separate treatment as may be required because of the different types of contracts involved (such as fixed-price, cost-plus-fixed fee, price-minus contracts, contracts subject to contractual or statutory fixed profit limitations and contracts providing for redetermination or revision of the contract price during the life of the contracts). In this connection, attention is directed to paragraphs 306 and 307.

(3) If the completed contract method of accounting is used for the purposes of renegotiation for any fiscal year, and if a different method of accounting was used for the purposes of renegotiation for a prior fiscal year, the provisions of paragraph 302 will be considered, and any amounts received or accrued and any costs paid or incurred which were included in such previous renegotiation will be excluded from consideration. The authority conferred by this paragraph 301.3 upon the Department to which a contractor has been assigned for renegotiation to approve a request that the completed contract method of accounting be used for the purposes of renegotiation is not limited by the provisions of paragraph 301.4.

301.4 Renegotiation of Completed or Terminated Contracts on a Completed Contract Basis Where a Contractor Is out of War Business. Completed contract renegotiation under the principles set forth in paragraphs 301.3 and 301.6 may also be granted upon the request of a contractor or subcontractor although certain amounts received or accrued under one or more of the contracts or subcontracts involved have been included in renegotiation for a prior fiscal year, provided that any amounts received or accrued and costs paid or incurred which have been included in any previous renegotiations shall be excluded from consideration in the completed contract renegotiation. No such request shall be granted, however, unless (a) only a limited number of contracts and subcontracts are involved, (b) all such contracts and subcontracts have been completed or terminated at the time renegotiation takes place, and (c) the contractor or subcontractor then holds no additional contracts or subcontracts subject to renegotiation. If more than five contracts or subcontracts are involved in such a case, express approval of the War Contracts Board must be obtained before granting the contractor's request. In all such cases the final agreement must contain appropriate provision for the protection of the interest of the Government in the event the contractor enters into contracts or subcontracts for additional renegotiable business at some subsequent time during the latest fiscal period of the contractor with which the completed contract renegotiation is concerned.

301.5 Ascertainment of Date of Completion of Contracts. For the purposes of this paragraph 301 a contract shall be regarded

as having been completed when the performance by the contractor thereunder has been completed unless there are exceptional circumstances or contractual provisions which justify or require the application of a different principle in a particular case.

301.6 **Contracts to Be Included in a Completed Contract Renegotiation.** Subject to the provisions of subparagraph 301.3 (2) with respect to separate treatment of different types of contracts, contracts and subcontracts to be renegotiated on a completed contract basis will be renegotiated as a group when completed within a given fiscal year, but contracts completed in one fiscal year may not be grouped with contracts completed in a different fiscal year. In the event that contracts to be renegotiated on a completed contract basis are uncompleted at the termination date of the 1943 Act, the Department to which the contractor is assigned for renegotiation will be guided by the provisions of paragraph 302 as well as by the principles of subsection (h) of the 1943 Act (see paragraph 370 and following).

301.7 **Renegotiation of Related Contracts.** Contracts and subcontracts under which architectural, engineering or management services or any combination thereof are rendered and which are related to a contract or subcontract which is renegotiable on a completed contract basis under these Regulations may also be renegotiated on a completed contract basis.

302. **Differing Accounting Methods.** Should there be employed a method of computing profit in a renegotiation for any fiscal year which is different from that employed in renegotiation for the fiscal year immediately preceding, the Department conducting the renegotiation must make adequate provision in the agreement or otherwise so that renegotiable business will not escape renegotiation because of the change. The interest of the Government in connection with the year which is the subject of renegotiation and for future years must also be protected and generally no item of cost which has been allowed in a previous renegotiation should be allowed in any subsequent renegotiation. These principles apply to renegotiation conducted with respect to a fiscal year, to a period other than a fiscal year or on a contract-by-contract basis. Under ordinary circumstances a contractor will be renegotiated on the same basis as that used for the determination of his income for Federal income tax purposes and, where a contractor requests and is allowed to renegotiate on some other basis, he will be required to agree that future renegotiations will be conducted on the same basis unless the War Contracts Board approves a variation of this proceeding by reason of unusual circumstances in a particular case.

303. **Long-Term Ship Construction Contracts and Certain Types of Utility Contracts.** The renegotiation of long-term ship construction contracts and of certain classes of utility contracts which are subject to renegotiation by reason of their particular size or character (see paragraph 842) may with the consent of the contractor be conducted on such basis as, in the opinion of the Department conducting the renegotiation, will be most appropriate for the determination of excessive profits. In determining such basis, consideration will be given to the basis of renegotiation used by such Department in prior rene-

gotiations where the contractor concerned has been renegotiated for a prior period or with respect to other contracts.

304. Cost-Plus-Fixed-Fee Contracts.

304.1 Separate Consideration. The financial and other data upon which the renegotiation is based must clearly reflect the financial results of performance of cost-plus-fixed-fee contracts and subcontracts separately from the financial results of performance of other contracts and subcontracts. Accordingly, the amounts received or accrued and costs paid or incurred on such cost-plus-fixed-fee contracts must be segregated from such amounts relating to other renegotiable contracts and subcontracts, so that an appropriate appraisal of the profits from such cost-plus-fixed-fee contracts and subcontracts can be made.

305. Joint Venture Contracts. Where two or more parties enter into an arrangement for the performance jointly of one or more projects, the combination resulting from such arrangement is commonly referred to as a "joint venture." Such a joint venture is regarded as an entity which, with respect to its contracts or subcontracts within the scope of the Renegotiation Act of 1943, is a "contractor" or "subcontractor" within the meaning of the Act. Therefore, the joint venture is renegotiated with respect to its renegotiable contracts and subcontracts without regard to other contracts or subcontracts which may be held by the members of the joint venture.

306. Treatment of Contracts with Fixed Profit Limitations.

306.1 Included in Renegotiation. Certain contracts with various Departments, particularly the Navy Department, Maritime Commission, and War Shipping Administration, are subject to provisions limiting the contractor's profit thereunder to a fixed percentage of the total sales or contract prices or costs within the scope of such limitation. Such contracts will be included in renegotiation but the agreement made therein shall reserve to the Department having this independent duty, the corresponding right to determine and collect profits, if any, in excess of such limitation.

306.2 Method of Renegotiation in Such Cases. The contractor's sales or contract prices and costs under contracts subject to such profit limitation shall be included with the sales or contract prices and costs of his other renegotiable business, unless segregation shall be deemed necessary by a Department. Where the contract has not been finally audited the contractor shall be allowed to set up and shall be required to maintain an actual reserve to cover his liability in connection with such profit limitation in an amount by which the contractor's profit within the scope of such limitation is estimated to exceed the maximum allowable profit thereunder. The provision for the establishment of the reserve will be treated as a reduction in net profits rather than an increase in costs or a reduction of sales. This reserve should be allowed on the condition that the contractor will report to the Department conducting the renegotiation and will pay to the United States as excessive profits in renegotiation so much of such reserve

as he is not required to repay under such profit limitation and as shall be required to be so paid by such Department.

307. Treatment of Contracts with Price Adjustment Provisions.

307.1 **Subject to Renegotiation.** Certain contracts provide for escalation, redetermination or revision of the contract price during the life of the contract. These contracts are subject to renegotiation unless otherwise exempted, but their provisions necessitate special treatment. Except for certain shipbuilding contracts referred to in paragraph 307.3, the method of handling certain situations arising in connection with such contracts on renegotiation is discussed in paragraph 307.2.

307.2 **Method of Renegotiation.**

(1) Upon over-all renegotiation involving such contracts, if the price for the period under review is expected to be retroactively reduced after the completion of the renegotiation proceedings, then in determining excessive profits the contractor should be permitted to set up a reasonable reserve to cover the estimated refund under the contract for the period under review. Similarly, if the contract clause is expected to result in a retroactive upward revision of the price for the period under review, an allowance therefor should be made on the basis of reasonable estimates and included in the renegotiable income of the contractor.

(2) In making such estimates the contracting officer should be consulted. Whenever the retroactive adjustment under such clauses will substantially affect the contractor's over-all profits for the period covered by renegotiation, production experience will generally be sufficient to permit a reasonable estimate of the amount of the probable refund or additional payment.

(3) Where the retroactive effect of the price adjustment clause would materially affect the basis of the settlement, but cannot be reasonably estimated, the matter may in certain instances be handled by disregarding the operation of the clause in over-all renegotiation and by amending the contract provision to make any retroactive adjustment inapplicable to the period covered by renegotiation, as is the case under the more recent forms of such price adjustment clauses.

(4) This paragraph 307.2 does not cover the method of handling certain shipbuilding contracts referred to in paragraph 307.3 below.

307.3 **Certain Shipbuilding Contracts.** Certain shipbuilding contracts with the Navy Department and Maritime Commission provide for escalation, price savings and for redetermination or revision of the contract price during the life of the contract and the Department with which the contract is made is charged with the duty of auditing and determining the amount to be paid the contractor for work performed under such contracts. Furthermore, under regulations of the Maritime Commission when two or more vessels are constructed under separate contracts as a single undertaking the profit or loss resulting

Claimant	*Symbol*
Aircraft	C
Army	W, O
Navy	N
Maritime	M
Lend-Lease	L

Careful analysis of shipments classified as follows will be necessary to ascertain that ultimate payment was made by one of the nine "Departments" specified in the Renegotiation Act.

	Probable Classification	
	Predominantly Renegotiable	*Predominantly Exempt*
Office of Economic Warfare		E
Canadian Division		D
War Food Administration		A
National Housing Agency		H
Petroleum Administration for War		P
Office of Defense Transportation		T
Office of War Utilities		U
Office of Rubber Director	R, F	
WPB Office of Operations Vice Chairman	B, G, J, K	
WPB Facilities Bureau	F	
WPB Office of Civilian Requirements	S	V
Special Purpose	AM, FC, PX, X-1, MRO	WH, RO, SO

The most expeditious method of classifying shipments of these types would appear to be through an analysis of purchase orders, either by customers or by typical months, on the basis of "major program identification symbols". (See pages 1 to 4 of WPB pamphlet referred to in subparagraph 4 above.) The same type of analysis is also suggested for companies using customer-furnished materials inasmuch as orders received by them are required to carry the "major program identification symbol"

(6) The segregation of sales for manufacturers of wood products, textiles, chemicals, foods, tobacco products, and printing and publishing items usually can be accomplished most easily through an analysis in terms of end-use orders by customers. PD25A applications to the WPB will provide information useful for this purpose. End-use symbols are still used by companies not operating under "CMP"

323. **Segregation with Respect to Contracts with RFC Subsidiaries.** In connection with prime contracts between a contractor and Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company, a segregation of sales and allocation of costs is necessary in order that excessive profits, if any, attributable to such contracts may be computed. Such segregation shall not be necessary in cases in which the total amounts received or accrued under such prime contracts with any of the above named subsidiaries of the Reconstruction Finance Corporation do not exceed $50,000, since in any such case no separate determination of excessive profits under such prime contracts will be made. (See paragraph 502.5 and note to article 4 of the Standard Form of Agreement, Form I, para-

graph 741.1, requiring repayment of such profits to the RFC Price Adjustment Board.)

324. Segregation and Exclusion of Exempt Contracts. Sales and costs allocable to any contract or portion thereof which is exempt from renegotiation under subsection (i) (1) of the 1943 Act, or which is exempted from renegotiation under subsection (i) (4) of the 1943 Act, shall be entirely excluded from consideration in determining whether excessive profits have been realized and the amount thereof. However, sales allocable to such contracts shall not be excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6) of the 1943 Act.

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the amount of such excess inventory as computed at the beginning of the month, until new computations at the beginning of the succeeding month shall be made. It will not be necessary to calculate actual physical inventories and orders on hand at the beginning of each month; a cumulative calculation may be made by applying the purchases made and orders taken in each month to the position at the beginning thereof, until the date of the succeeding physical inventory. The Department may in its discretion allow a contractor or subcontractor to deviate in individual cases from the monthly basis described above, if available records are considered to be such that some other basis (daily, weekly, etc.) will more accurately bring out the facts in the case. Whatever basis is approved must be used consistently throughout the fiscal year.

(d) *Treatment of Excess Inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter, and shall be allocated pro-rata between contracts with the Departments and subcontracts taken during the month under which the amounts received or accrued are subject to renegotiation, and other contracts, to the extent that such contracts and subcontracts require the use of the material, up to the end of the month in which the excess inventory is exhausted.

(e) *Exclusion of Profits Attributable to Increment in Value of Excess Inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits.

345. Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions.

345.1 Statutory Exemption. Subsection (i) (1) (D) of the 1943 Act provides that it shall not apply to—

> "(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code."

345.2 Internal Revenue Code. Section 101 (6) of the Internal Revenue Code exempts from taxation:

"(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

346. Construction Contracts Awarded as a Result of Competitive Bidding.

346.1 Statutory Exemption. Subsection (i) (1) (E) of the 1943 Act provides that it shall not apply to—

"(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility".

346.2 Interpretation and Application of Exemption.

(1) This section of the 1943 Act is applicable only to amounts received or accrued for fiscal years ending after June 30, 1943 (regardless of the date when the contract was made) under any contract which meets all of the following conditions:

(a) The contract is a contract with a Department (i. e., is a prime contract). The exemption has no direct applicability to subcontracts—but see paragraphs 347 and 356.2 for the principles governing exemption of subcontracts under prime contracts as to which this exemption is applicable.

(b) The contract is for the construction of a building, structure, improvement or other similar facility. The exemption has no applicability to contracts for the furnishing of materials or supplies even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts for the furnishing or installation of machinery or equipment.

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or facility from a contract for the furnishing or installation of machinery and equipment, regard is to be had to the subject matter of the contract. If the subject matter of the contract would, as the subject matter of a subcontract, constitute machinery or equipment within the principles stated in paragraph 335.2(2) and 335.2(5) of these Regulations, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or facility, but will be regarded as a contract for the furnishing or installation of machinery or equipment. In a case where the construction of a building, structure, improvement or facility and

Section 5

PERMISSIVE EXEMPTIONS FROM RENEGOTIATION

350. Scope of Section. The preceding Section deals with mandatory exemptions and exclusions from the operation of the Renegotiation Act of 1943. The Act contains certain provisions authorizing the War Contracts Board, or persons to whom its authority shall be delegated, to exempt other contracts and subcontracts from the operation of the Act. This Section will deal with these permissive exemptions. Such exempted contracts are excluded from consideration in determining whether excessive profits have been realized and the amount thereof, but are not excluded in determining whether the contractor is subject to renegotiation under subsection (c) (6). (See paragraph 324.)

351. Contracts and Subcontracts to be Performed Outside of the United States.

351.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(A) any contract or subcontract to be performed outside of the territorial limits of the continental United States or in Alaska."

351.2 Exemption.

(1) Each contract or subcontract to be performed outside the territorial limits of the continental United States, outside the territories of Alaska and Hawaii, outside the Panama Canal Zone, and outside the other territories and island possessions of the United States shall be exempt from the provisions of the Renegotiation Act of 1943 unless it shall be determined by the War Contracts Board or by any authority to whom power to exempt individual contracts under subsection (1) (4) (A) of the 1943 Act has been or may be delegated or redelegated;

(a) that administrative difficulties do not make impracticable the renegotiation of such contract or subcontract,

(b) that the procurement program of the United States in foreign countries will not be adversely affected by such renegotiation, and

(c) that such renegotiation will not otherwise be contrary to the interests of the United States.

(2) In determining whether the procurement program of the United States in foreign countries or the interests of the United States generally will be adversely affected by such renegotiation, it is considered desirable that representatives of the Department of State of the United States be consulted, if practicable; such consultation shall not, however, be essential to the valid renegotiation of any contractor or subcontractor.

(3) Such determination may be made at any time whether before or after the execution of the contract or subcontract and whether or not it contains a renegotiation clause.

352. Contracts and Subcontracts Where Profits Determinable When Price Established.

352.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(B) any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established, such as certain classes of agreements for personal services, for the purchase of real property, perishable goods, or commodities the minimum price for the sale of which has been fixed by a public regulatory body, of leases and license agreements, and of agreements where the period of performance under such contract or subcontract will not be in excess of thirty days;"

352.2 Exemptions.

(1) In the opinion of the War Contracts Price Adjustment Board, the profits from the following contracts or portions thereof can be determined with reasonable certainty when the contract price is established, and such contracts or portions thereof are accordingly exempted from the provisions of the Renegotiation Act to the extent herein provided:

(a) contracts and subcontracts for the purchase or lease of any interest in real estate (see paragraph 335.1), or

(b) contracts for the purchase of capital assets, where the sale of such assets is not a part of or connected with the ordinary course of business of the vendor,

(c) contracts for the purchase of vessels and their equipment, other than contracts for the construction of vessels,

(d) such portion of contracts for the lease of vessels and their equipment, which provides (as in bareboat charters), for a rental for the bare use of the vessel and its equipment (herein called the "use rate"), or which provides (as in time charters) for a use rate, as distinguished from compensation for the services to be rendered by the contractor under the time charter (herein called the "service rate"), provided that where the time charter contains no segregation of the contract price between the use rate and the service rate, the apportionment of the contract price between the use rate and the service rate may be made by the Department conducting the renegotiation. In connection with such apportionment consideration may be given to the Report of the Advisory Board on Just Compensation, established by the President on October 15, 1943, by Executive Order 9387, which report dated December 7, 1943, established rules of general applicability for the guidance of the War Shipping Administration in determining just compensation to be paid for all vessels requisitioned, purchased, chartered or insured by the said Administration, and General Order 37 of the War Shipping Administration (8 F. R. 3806), and any supplements and amendments thereto, to the extent the same may be applicable to such vessels and their equipment. Nothing contained in this subparagraph (d) shall be deemed to exempt from renegotiation

contracts commonly known as "space charters" or the service rate in time charters, regardless of whether the vessel involved was requisitioned by the Government or any agency thereof.

(2) The words "when the contract price is established" in subsection (i) (4) (B) of the Renegotiation Act and in the preceding subdivision of this paragraph are a qualification upon the scope of the exemption, and contemplate that the contract or subcontract price shall be established at the time the contract or subcontract is entered into. Accordingly, this exemption extends only to contracts and subcontracts under which the price is a fixed or determinable amount at the time the contract or subcontract is entered into, and does not apply to any contract or subcontract under which the price, at the time the contract or subcontract is entered into, is contingent upon a subsequent event or is thereafter to be determined by reference to a variable element (as, for example, the lessee's sales or profits).

(3) For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation and communications and subcontracts thereunder, see paragraph 842.

353. When Contract Provisions Adequate to Prevent Excessive Profits.

353.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(C) any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits."

353.2 Requests for Exemption. Requests for exemption of particular contracts and subcontracts should be directed to the procurement officials of the Department concerned, and not to the War Contracts Board.

354. Contracts and Subcontracts for Standard Commercial Articles.

354.1 Statutory Authority.

(1) Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

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(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular contract or subcontract shall be made by the Department or Service conducting the renegotiation in which such contract or subcontract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 Exemption. (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only

a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(3) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(3) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

356.3 **Cross reference.** For an exemption of subcontracts under certain public utility contracts, see paragraph 842.5.

357. **Delegation of Authority to Make Permissive Exemptions.** The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. **Requests for Exemption.** All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code were decreased by reason of omitting from gross income (or by reason of the application of the provisions of section 3806 (a) of the Internal Revenue Code with respect to) that portion of the excessive profits for the renegotiated year which is equal to the amount of the gross renegotiation rebate. The amount by which the gross renegotiation rebate for the renegotiated year exceeds the amount of the contractor's or subcontractor's Federal tax benefit from the renegotiation for such year shall be the amount of the net renegotiation rebate for such year."

381.4 Profit, Cost Allocation and Allowance—General.

(1) *Profit.* The term "profits derived from contracts with the Departments and subcontracts" is defined by the Act as the excess of the amount received or accrued under contracts and subcontracts over the costs paid or incurred with respect thereto. The term "costs" includes selling, general and administrative expenses. In connection with renegotiation on an over-all fiscal-year basis income received or accrued and items of cost paid or incurred will be considered as having been received or accrued or paid or incurred in the fiscal year to which such items are to be attributed in accordance with the method of accounting employed by the contractor or subcontractor in keeping his books or in accordance with such other method of accounting as the contractor and the Department conducting the renegotiation may agree upon pursuant to the provisions of paragraphs 301 and 303. The method of accounting employed in determining the net income of the contractor or subcontractor for Federal income tax purposes shall be deemed to be the method of accounting employed by him in keeping his books. When the contractor requests that renegotiation be conducted on a completed contract basis, receipts and accruals and costs paid or incurred will be determined in accordance with the method agreed upon in connection with the granting of such request.

(2) *Allocation of Cost.* In general the costs paid or incurred with respect to renegotiable contracts will be those costs allocated thereto by the contractor's established cost accounting method if that method reflects recognized accounting principles and practices. If, in the opinion of the War Contracts Board there is no adequate or effective cost accounting method in use, or if the method employed does not properly reflect such costs because there are unjustified or improper allocations of items of cost in the accounting records or in the reports or statements filed for the purpose of renegotiation, costs shall be determined in accordance with such method as in the opinion of the Board properly reflects such costs. No item of cost shall be charged to any contract or subcontract or used in any manner in determining costs to the extent that such item is not properly chargeable to such contracts or subcontracts.

(3) *Tax Deductions.* Costs allocable to renegotiable business shall be determined in accordance with the principles set forth above. Where the full amount of an item of cost is allocable to renegotiable business, it shall be allowed in the amount estimated by the War Contracts Board, or any agency to which its functions have been delegated, to be allowable as a deduction or exclusion under Chapters 1 and 2E of the

Internal Revenue Code. No such item of cost shall be allowed in an amount less than or in excess of that which is estimated to be deductible or excludible from income under the Internal Revenue Code, and all items of cost shall be attributed to the fiscal year in which they are allowable in the determination of taxable income under said Code. Where only a portion of an item of cost is allocable to renegotiable business, the War Contracts Board, or any agency to which its functions have been delegated, shall estimate the total amount allowable to the contractor, as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code and the portion of this estimated amount which is allocable to renegotiable business in accordance with the principles set forth above shall be allowed as a cost of renegotiable business. Where it is clear that a contractor's deductions and exclusions under the Internal Revenue Code result in allowable costs of renegotiable business which are either high or low on a comparative basis, this circumstance shall be considered in connection with the factor of the "reasonableness of costs" of the contractor and the determination of the amount of the profit adjustment to be required of the contractor.

(4) *Conditional Allowance of Cost.* The estimate of the renegotiating agency as to whether an item is allowable as a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code will, with the exception discussed hereafter in this subparagraph, be final for the purposes of renegotiation regardless of the difficulty of making such an estimate. However, in a few special cases it may be impossible for the agency to make any reasonable estimate as to whether or to what extent a particular item is allowable as a deduction or exclusion under the Internal Revenue Code for the fiscal year under renegotiation. In such special cases where the item is substantial in relation to the profits to be eliminated, the renegotiating agency may, subject to the restrictions set forth below, allow the item as a cost in renegotiation on the condition that in the renegotiation agreement the contractor will agree to refund as additional excessive profits, the amount so allowed as a cost of renegotiable business which is finally determined to be not allowable as a deduction or exclusion under the Internal Revenue Code for the fiscal year in which it was so allowed in renegotiation. If such conditional allowance is desirable, the renegotiating agency will observe the following procedure:

(a) the renegotiating agency, prior to making the conditional allowance, shall transmit to the Chairman of the Price Adjustment Board of the Department concerned, a statement setting forth the approximate amount of excessive profits to be finally eliminated and the amount of the item to be conditionally allowed in determining such excessive profits, a full description of the facts and the reasons why the agency is unable to determine whether the item should be allowed or disallowed as a cost, and a copy of the special clause proposed to be included in the renegotiation agreement.

(b) the renegotiating agency shall, at the same time, advise the Chairman of the Price Adjustment Board of the Department concerned whether the financial condition of the contractor appears to be such as to justify postponement of final determination of the allowability of the item as a cost.

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties payable to the licensor after the effective date of the notice under the statute, whether or not accruing before or after the date, and does not and cannot require the refund of any royalties which have been paid prior thereto.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are subject to an order under the Royalty Adjustment Act, the Departments will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the amounts permitted to be paid under the order.

(4) In renegotiation with a licensee for a period prior to that in which royalty accruals are subject to an order under the Royalty Adjustment Act, no weight will normally be given to the determination made in a later order as to what rates and amounts of royalties are fair and just. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23(a) of the Internal Revenue Code. Particular attention should be given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code. even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention

or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee.

388.2 **Corporate Charitable Contributions.** Contributions of the character described in Section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under Section 23 (q).

388.3 **Cost Allowance in Connection with Raw Materials.** Reference is made to paragraphs 344.3 and 344.4 for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials.

389. **State Income Taxes.**

389.1 **In General.** Under subsection (a) (4) (B) of the 1943 Act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that in determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income (other than Federal taxes) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. The term "taxes measured by income" is interpreted to mean taxes which vary in accordance with the amount of net income of the taxpayer. Such term does not include taxes imposed upon or measured by gross income, gross receipts or sales. Such taxes measured by net income are herein referred to generally as "state income taxes" although actually they may not be designated as "income taxes" in the legislation imposing such taxes, and although they may be imposed by political sub-divisions other than a state. For the effect of the floor provision limiting refunds of excessive profits, see paragraph 348.3(6).

389.2 **Adjustment for State Tax Imposed at a "Flat Rate".**

(1) The amount of unadjusted excessive profits, without consideration of any state income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The state income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under Section 3806 of the Internal Revenue Code. (See paragraph 440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative

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Section 2

RECOVERY OF EXCESSIVE PROFITS ALREADY REALIZED

420. Scope of Section. This Section deals with the repayment of excessive profits already realized. Section 3 deals with the elimination of excessive profits through voluntary agreement to reduce prices on deliveries to be made in the future. Section 4 deals with the allowance of the tax credit to which the contractor is entitled under Section 3806 of the Internal Revenue Code.

421. Statutory Provision. Subsection (c) (2) of the 1943 Act provides:

> "Upon the making of an agreement, or the entry of an order, under paragraph (1) by the Board, or the entry of an order under subsection (e) by The Tax Court of the United States, determining excessive profits, the Board shall forthwith authorize and direct the Secretaries or any of them to eliminate such excessive profits (A) by reductions in the amounts otherwise payable to the contractor under contracts with the departments, or by other revision of their terms; or (B) by withholding from amounts otherwise due to the contractor any amount of such excessive profits; or (C) by directing a contractor to withhold for the account of the United States, from amounts otherwise due to a subcontractor, any amount of such excessive profits of such subcontractor; or (D) by recovery from the contractor, through repayment, credit, or suit any amount of such excessive profits actually paid to him; or (E) by any combination of these methods, as is deemed desirable. Actions on behalf of the United States may be brought in the appropriate courts of the United States to recover from the contractor any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection. The surety under a contract or subcontract shall not be liable for the repayment of any excessive profits thereon. Each contractor and subcontractor is hereby indemnified by the United States against all claims by any subcontractor on account of amounts withheld from such subcontractor pursuant to this paragraph. All money recovered in respect of amounts paid to the contractor from appropriations from the Treasury by way of repayment or suit under this subsection shall be covered into the Treasury as miscellaneous receipts. Upon the withholding of any amount of excessive profits or the crediting of any amount of excessive profits against amounts otherwise due a contractor, the Secretary shall certify the amount thereof to the Treasury and the appropriations of his Department shall be reduced by an amount equal to the amount so withheld or credited. The amount of such reductions shall be transferred to the surplus fund of the Treasury. In eliminating excessive profits the Secretary shall allow the contractor or subcontractor credit for Federal income and excess profits taxes as provided in section 3806 of the Internal Revenue Code.

For the purposes of this paragraph the term 'contractor' includes a subcontractor."

422. **Recovery by Voluntary Repayment.**

422.1 **In General.** In renegotiation with respect to a completed fiscal period, the elimination of excessive profits will ordinarily be effected pursuant to an agreement providing for a refund. This refund may be made by the contractor in a single payment or in installments as the agreement may provide (see paragraphs 323 and 502.5).

422.2 **Time of Repayment—General Rule.**

(1) Generally, when excessive profits are eliminated by installment payments, the final installment must be paid not later than the end of the fiscal year following that to which the renegotiation relates, or within 30 days after the execution and delivery of the agreement, whichever is later.

(2) If, in the opinion of the Department conducting the renegotiation, the application of the policy stated in paragraph 422.2 (1) will result in undue hardship to a contractor, then the renegotiation agreement may provide for further extensions of the time of payment for such period or periods, not extending beyond two years after the close of the fiscal year to which renegotiation relates, as may be approved by such Department.

(3) Installments must be arranged so that there is no contravention of the principle stated in paragraph 422.3 with respect to income tax payments.

422.3 **Relation to Income Tax Payments.** In any case where the excessive profits have been or may be excluded from income for Federal income and excess profits tax purposes for the year to which renegotiation relates, the installments in which the renegotiation refund is to be paid must be so arranged that the total cash payments required on or before each payment date for Federal income and excess profits taxes upon income for such year are at least equal to the Federal income and excess profits taxes the contractor would have had to pay by each such date upon the excessive profits eliminated.

422.4 **Interest.**

(1) No renegotiation agreement when originally made shall require the payment of interest on installments of the refund which are not in default thereunder and which are provided to be payable within the time prescribed in paragraph 422.2.

(2) In cases of default, interest accrues and is payable upon each payment due under an agreement from and after the due date thereof, whether or not the agreement contains a contract provision for the payment of interest. The rate shall be that provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest. (See paragraphs 502.5 (8), and 807.)

422.5 **Repayment by Credit Memoranda.** The elimination of excessive profits may, but only if the renegotiation agreement so provides, be effected by reductions in the amounts otherwise payable to the contractor under contracts with the Departments or by other revision of their terms. This may be accomplished in whole or in part by the issuance by the contractor of credit memoranda to a Department or Departments applicable against specified existing prime contracts in a sum not in excess of the amounts then unpaid thereon.

tax liability for 1943, as shown on his return for 1943, or his total payments on account of his tax for 1942 and 1943, whichever amount is the larger.

(3) Where excessive profits determined for 1942 or 1943 were included by the contractor in the computation of his tax liability as shown on his 1943 return, the tax credit computation should be requested in accordance with the form appearing at paragraph 732.

(4) Where excessive profits determined for 1942 or 1943 were included by the individual in computing his estimated tax for 1943 but such excessive profits were omitted in computing his tax liability as shown on his return for 1943, the tax credit computation should be requested in accordance with the form appearing at paragraph 733.

(5) Where, before renegotiation, the excessive profits were included in the tax computation as described in sub-paragraph (3) or (4), the amount of the credit is the excess of (a) the amount of the tax which is to be decreased, described under sub-paragraph (2), over (b) the tax as computed after the excessive profits have been eliminated from income.

(6) Under the Current Tax Payment Act, a 1942 taxable year of an individual is any taxable year which began in 1942. Such a 1942 taxable year may, therefore, be a fiscal year ended at any time in 1943 prior to December 31, 1943.

(7) In no case will a tax credit be computed by the Internal Revenue Agent in Charge, or allowed in renegotiation, prior to the filing of the return for 1943.

442.4 Determination of Federal Tax Credit for Partnerships.

(1) Since a partnership files only an information return and the Federal tax is imposed on the individual incomes of the partners, the tax credit to which a partnership is entitled under Section 3806 for a prior taxable year is the aggregate amount of the separate credits to which the individual partners are entitled because their shares of the partnership's income are reduced by the elimination of the excessive partnership profit. A request for a credit computation should be made for each partner on the form set forth at paragraph 732 or 733, whichever is appropriate under the circumstances.

(2) For example, if A and B are partners with 60% and 40% interests respectively, and the partnership has realized excessive profits of $1,000,000 for a prior taxable year, then the elimination of $1,000,000 excessive profits of the partnership will reduce A's taxable income for the year by $600,000 and B's by $400,000. Upon request for a determination of the credit under Section 3806, the Internal Revenue Agent in Charge will determine the amount by which the elimination of these excessive profits would reduce A's and B's individual income tax for the year. The aggregate amount of such reductions in A's and B's individual Federal income tax will represent the credit to be allowed under Section 3806 against the partnership's obligation to refund excessive profits of $1,000,000.

442.5 Determination of Federal Tax Credit for Sole Proprietor, Partnership and Joint Venture in Community Property States. If a portion of the excessive profits received or accrued by a sole pro-

prietor, partner, or joint venturer, was included in the Federal income tax return of his or her spouse by virtue of the community property laws of the state in which they are domiciled, the tax credit allowed under Section 3806 will include the amount, as determined by the Internal Revenue Agent in Charge, by which the spouse's tax is decreased by the elimination of the excessive profits. In such cases, both the husband and the wife should submit to the Internal Revenue Agent in Charge a written request for a determination of tax credit (see paragraphs 442.2, 732 and 733).

443. Renegotiation Prior to Filing of Federal Tax Returns.

443.1 Exclusion of Excessive Profits from Returns.

(1) When, as a result of renegotiation, the amount of excessive profits is determined for a period for which Federal income and excess profits tax returns have not been filed, such amount of excessive profits may be excluded from the contractor's returns for the period.

(2) The amount of excessive profits eliminated for a particular taxable year may not be deducted or excluded from taxable income for any other taxable year.

(3) The tax effect of renegotiation for periods for which Federal income and excess profits tax returns have not been filed is more fully set forth in IT 3577 and IT 3611 at paragraphs 852.2 and 852.3.

443.2 Effect of Tentative Tax Return. When a contractor has filed a tentative return for the year involved and has been granted an extension of time for filing his completed return, the provisions of IT 3577 and IT 3611 as outlined above will apply if the renegotiation takes place before the filing of the complete return.

444. Special Allocations of Excessive Profits Elimination Required for Federal Tax Purposes.

(1) If the basis upon which the renegotiation has been conducted differs from the basis upon which the contractor has filed his Federal Tax returns, the excessive profits to be eliminated must, for purposes of a proper computation of the allowable tax credit under Section 3806 of the Internal Revenue Code, be allocated to the contractor's taxable year or years for which such excessive profits were reported as income in such tax returns. This is especially significant in cases where the renegotiation has been conducted on a completed contract basis although the contractor has used the cash receipts and disbursements or the percentage of completion method of accounting for Federal Tax purposes in reporting his income from some or all of the contracts covered by the renegotiation. In such a case, the allocation will not be made by prorating the adjusted contract price after renegotiation to the years involved on the basis of receipts or accruals under the contract reported for tax purposes for such years, respectively, but will be made by prorating the excessive profits to those taxable years for which the contract profits reported for tax purposes exceeded non-excessive profits on the contract, as measured by the over-all margin of profit allowed on the contract. After such allocation the ratio of retained renegotiable profits to adjusted sales for each year

to which excessive profits are allocated should be the same. The contractor's tax returns for the year involved and such supplementary data as may be pertinent to an analysis of the contractor's taxable income for each such year will be used as the basis of such allocation.

(2) Where a renegotiation is conducted on a consolidated basis, excessive profits to be eliminated must be allocated between the entities so consolidated (see paragraph 311).

(3) The allocation of excessive profits is to be made by the agency conducting the renegotiation and not by the contractor. The contractor may, however, furnish or be required to furnish such supplementary information in explanation of the sources of taxable income as reported for any year as may be pertinent to such allocation.

(4) Special allocations of excessive profits to be eliminated under (1) and (2) above should appear in the renegotiation agreement or in the order determining excessive profits and also in any request to an Internal Revenue Agent in Charge for tax credit computations.

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(2) If the renegotiation is concluded before the contractor has filed his Federal income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in paragraph 741.2(3)(a) of these Regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under Section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in paragraph 741.2(3)(b) of these Regulations.

(4) If the renegotiation is concluded with a partnership, the form of tax credit clause should be appropriately modified. In paragraph 741.2 (3) (c) is a form of partnership tax credit clause which may be used when it is appropriate in view of the facts. Should less than all the partners sign the renegotiation agreement (see RR 502.12 (3) and (6)) such clause will have to be appropriately modified.

502.5 Article 4: Terms of Payment.

(1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in paragraph 741.2 (5) of these Regulations. The Department which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company, or any of such corporations, and the total amounts received or accrued under such prime contracts exceed $50,000, the payment provision, in accordance with the footnote to Article 4 on the standard form, will require payment of the excessive profits under such prime contracts to the RFC Price Adjustment Board. In cases in which the total amounts received or accrued under prime contracts with any of the above named subsidiaries of the RFC do not exceed $50,000, it shall not be necessary to make a separate determination of the profits derived from such contracts and the entire refund shall be payable as though no contracts with the RFC subsidiaries were involved.

(2) For the purpose of determining the portion of the profits which are to be eliminated which were derived from such prime contracts, the Department conducting renegotiation will segregate the amounts received or accrued under such contracts from amounts received or accrued under other renegotiable contracts and subcontracts involved in the renegotiation of a particular contractor. It will also generally segregate the profits derived from such prime contracts. Where, however, it is indicated that the margin of profit attributable to contracts with the RFC subsidiaries is substantially the same as that attributable to other contracts and subcontracts involved in the

renegotiation, a fair allocation of the profits to be eliminated may be effected by prorating the amount of the refund on the basis of the amount of renegotiable business attributable to contracts with the RFC subsidiaries and the amount of such business attributable to other contracts and subcontracts. Accordingly, the Department conducting renegotiation may determine the amount of the renegotiation refund to be paid to the RFC Price Adjustment Board on such basis where it is believed that the application of the same will result in a fair and reasonably accurate result.

(3) Responsibility for the collection of, and for the maintenance of records concerning, any amounts due the RFC Price Adjustment Board under renegotiation agreements, shall rest with the RFC Price Adjustment Board, and any such agreements providing for refunds to the RFC under the 1943 Act shall be referred to the RFC Price Adjustment Board for the collection of that portion of the refund payable to that Board. The Department conducting the renegotiation will retain responsibility for the collection of only that portion of the refund which is payable into the Treasury of the United States. In such cases, an authenticated copy of the renegotiation agreement shall be forwarded to the RFC Price Adjustment Board, through the Assignments and Statistics Branch, Renegotiation Division, ASF. The Assignments and Statistics Branch should be promptly notified of any default in the collection of any installment due under such agreements and the enforcement of the obligations under the agreement properly coordinated under the supervision of the War Contracts Price Adjustment Board.

(4) In the case of suit for the collection of any amounts due under any renegotiation agreements in which the RFC is entitled to a portion of the refund, under ordinary circumstances the Assignments and Statistics Branch should assign such case for collection to the Department then having the predominant interest in the balance of the refund.

(5) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(6) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see paragraph 505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(7) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in paragraph 422 of these Regulations.

(8) Provision is made in the standard form of renegotiation agreement for the payment of interest on defaulted installments. (See paragraph 741.1 subdivision (4) and paragraph 741.2(5).) The rate specified in the agreement is "the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest." (See paragraph 807.)

502.6 **Article 5: Article Requiring Elimination of Additional Excessive Profits.** The provision set forth in paragraph 741.1 of these Regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the Renegotiation Act of 1943 are increased.

502.7 **Article 6: Covenant Against Contingent Fees.** This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts.

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Section 5

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Section 9

ADDRESSES

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EXHIBIT 2

.....
Name of Contractor

.....
Address of Contractor

COMPARATIVE STATEMENT OF INCOME

This form and accompanying data are to be submitted only by contractors who have not been previously renegotiated.

	Years ended ..... (In even thousands of dollars)					
	19..	19..	19..	19..	19..	19..
1. Net sales (excluding sales or billings under cost-plus-fixed-fee contracts)	$	$	$	$	$	$
2. Cost of sales						
3. Gross profit						
4. Selling and advertising expenses						
5. General and administrative expenses						
6. Operating profit						
7. Per cent margin (ratio of line 6 to line 1)	%	%	%	%	%	%
8. Other applicable items:						
a. Interest paid						
b. Other applicable deductions						
c. Other applicable income						
9. Basic profit on fixed price contracts						
10. Per cent margin (ratio of line 9 to line 1)	%	%	%	%	%	%
11. Other income:						
a. Net fees earned under CPFF contracts						
b. Other						
12. Other deductions						
a. State taxes measured by income						
b. Other						
13. Net profit before provision for Federal taxes on income and extraordinary reserves						
14. Provision for Federal taxes on income—gross						
15. Post war refund of excess profits tax (credit)						
16. Net profit before extraordinary reserves						
17. Per cent of net worth at start of period	%	%	%	%	%	%
18. Provisions for extraordinary reserves						
19. Net income per books	$	$	$	$	$	$

INSTRUCTIONS:

1. This schedule is to be prepared for each of the seven years immediately prior to that under review.
2. Insofar as practicable, the amounts appearing under the various line captions should reflect items similar to those shown on Exhibit 1, so that true comparisons may be made.
3. If regular annual statements contain the information listed above, such statements may be submitted in lieu of this form.

See Reverse of Form for Supplemental Information Required

SUPPLEMENTAL INFORMATION

To be submitted only by contractors who have not been previously renegotiated.

1. If a corporation, state in which incorporated and date of incorporation; if a partnership or proprietorship, date of inception.

2. A brief history of the business, at least since 1936.

3. Balance sheets, as at the close of each of the contractor's fiscal years ended in 1936 to 1942, inclusive, or at the close of each year for which income data are submitted.

4. Comparative statement of income for each of the contractor's fiscal years ended in 1936 to 1942, inclusive, or for such of those years as he was in business. (Exhibit 2)

5. A statement of cost of sales and selling and administrative expenses for the three latest prior years, similar in form to items 22 and 24 of Exhibit 1-a. (See Instructions for Exhibit 1-a).

6. A statement of salaries and other compensation of officers and employees for the three latest prior years (similar to that in Section G-1).

7. Copy of Federal Income and Excess Profits Tax Return for the contractor's latest prior year, and a summary of any significant changes in taxable income since 1936, made as a result of examinations by the Bureau of Internal Revenue.

8. Explanation of any differences between the subsidiaries and affiliates, consolidated in Exhibit 2, and those which are consolidated in the financial statements for the current year.

9. A statement relative to each of the following:
   a. basic changes in accounting methods since 1936;
   b. revaluation of assets or recapitalization since 1936.

---

723. Contractor's Request for Renegotiation on Completed Contract Basis.

To: .....
(Insert name of Price Adjustment Board or Section.)

1. .....
(Insert correct legal name of contractor and indicate whether an individual, partnership, joint venture or corporation.)

(hereinafter referred to as "the contractor") represents as follows:

(a) that the contractor has a fiscal year ended..... (hereinafter referred to as "said fiscal year");

(b) that all of the contractor's construction contracts with a Department as that term is defined in the Renegotiation Act of 1943 and all of the contractor's construction subcontracts under a contract with such a Department which have been completed or terminated within said fiscal year are as follows:

Description and Date	*Amount*
.....	.....
.....	.....
.....	.....

2. Pursuant to subsection (c) (1) of the Renegotiation Act, the contractor hereby requests that all of the construction contracts and subcontracts described in paragraph 1 (b) above be renegotiated as a group and that the powers of the War Contracts Price Adjustment Board be exercised with respect to such group.

3. If the foregoing request is approved, the contractor hereby agrees to the following terms and conditions:

(a) The Renegotiation Act, and all regulations and interpretations made thereunder, other than those dealing with the allowance of tax credits, will be applied in all respects to the construction contracts and subcontracts described in

paragraph 1 (b) above and in determining profits derived therefrom, as though the contractor had kept (its) (his) books and had filed (its) (his) Federal income tax returns with respect to such contracts and subcontracts on a completed contract basis, including the application of the $500,000 exemption set forth in subsection (c) (6) of the Renegotiation Act and the application of the $500,000 "floor" as interpreted in paragraph 348.3 of the Renegotiation Regulations.

(b) With respect to any subsequent fiscal year, all of the contractor's construction contracts with a Department as that term is defined in the Renegotiation Act of 1943, and all construction subcontracts under a contract with such a Department, may at the option of the renegotiation agency be renegotiated as a group and the powers of the War Contracts Price Adjustment Board may at such option be exercised with respect to such group, and in any such renegotiation, the principles set forth in subparagraph 3 (a) above will be applied.

4. The undersigned agrees that this request, after having been delivered to the renegotiating agency, cannot be withdrawn without the written consent of the renegotiating agency.

IN WITNESS WHEREOF, the undersigned has executed this request as of the ..... day of ..... 194...

.....

By .....
(Title of Officer)

ATTEST:

.....
(Secretary)
(To be used if executed by a corporation.)

APPROVED:

.....
(Insert name and official title of person executing the approval in behalf of the government.)

NOTE: If the contractor is a corporation, the request will be accompanied by a certified copy of the resolution of the Board of Directors authorizing the request and the agreements therein contained. If a partnership or joint venture the request will be executed by all members of the partnership or joint venture.

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724. Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

724.1 Instructions for Preparation of Construction Contractors, Architects, and Engineers Information and Work Sheet for Renegotiation.

CONSTRUCTION CONTRACTORS, ARCHITECTS, AND ENGINEERS INFORMATION AND WORK SHEET FOR RENEGOTIATION.

Information indicated in parts I and II herein is required for renegotiation under the Renegotiation Act, as amended. Any part of this information which the contractor has submitted, either in the "Standard Form of Contractor's Report (for Construction Contractors,

Architects, and Engineers)" or in connection with a previous renegotiation, may be omitted, provided reference is made to the manner, time, and place of its submission. If any statements or information designated are inapplicable in a particular case, the contractor should so state and give the reason therefor. In financial statements all cents may be omitted. The contractor should so indicate if he prefers to discuss with the renegotiation authorities the methods of segregation of gross earnings and allocation of costs and expenses. In such cases, the contractor should submit all other information requested herein.

The contractor should certify that all information and data (subject to qualifications, if any, specifically set forth) are true and correct to the best of his knowledge and belief.

Part I

INSTRUCTIONS FOR PREPARATION OF EXHIBITS

The enclosed exhibits are provided for the contractor's use in this connection. Should he submit in some other form his income data separated as between renegotiable and nonrenegotiable business, these exhibits should be used as guides.

Exhibit I

For an interpretation of items entering into renegotiable and nonrenegotiable business, repectively, refer to "Standard Form of Contractor's Report (for Construction Contractors, Architects, and Engineers)," Instructions 3, 4, and 6.

Line 1. Gross Earnings.—Enter total dollar volume of all work done under prime contracts, subcontracts, and purchase orders and other earnings, segregated as indicated by the columnar headings. For lump-sum and unit-price contracts (column A) show total contract price. For cost-plus-fixed-fee contracts (column B) show total reimbursements and fees earned. On joint venture lump-sum and unit-price contracts enter contractor's proportionate share of the total contract price (column C). On joint-venture cost-plus-fixed-fee contracts enter his proportionate share of the reimbursable costs and fees (column C). (Joint ventures are renegotiated as separate entities.) Column D is to be used only by contractors who report for tax purposes on other than the completed contract basis, but who prepare this exhibit I on a completed contract basis.

Line 2. Job Costs.—Enter in each column the job costs applicable to the corresponding contract earnings entered on line 1. For cost-plus-fixed-fee contracts (column B) include both reimbursable and direct nonreimbursable costs. For joint-venture contracts (column C) show proportionate share of costs.

Lines 5, 8, and 9. General and Administrative Expenses; Other Income; Other Deductions.—Allocate to the classifications indicated for each column in accordance with the most equitable method in view of the particular situation.

Line 11. Rental Income From Owned Equipment (net).—Enter on this line in column E the renegotiable portion of the net amount

Section 4

FORMS RELATING TO AGREEMENTS AND UNILATERAL DETERMINATIONS

741. Agreement Forms.

741.1 Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ..... day of ..... 194.., by and between the UNITED STATES OF AMERICA (hereinafter referred to as "the Government") and .....
.....
* a corporation organized and existing under the laws of the state of .....,
* co-partners, doing business under the firm name of .....,
* a sole proprietor, doing business under the name of .....,
having its principal office at .....
..... (hereinafter referred to as "the Contractor").

1. *Profits to be Eliminated.* As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ..... Dollars ($.....) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended ....., 194.., (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.†

2. *Warranty.* This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading

3. *Tax Credit Under Section 3806 of the Internal Revenue Code.* The Contractor represents that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. *Terms of Payment.* The Contractor agrees to pay to the Government the sum of Dollars ($.....), being the amount determined in Article 1 hereof to be eliminated, as follows:

---

* Delete inapplicable language.

† If the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 of the Renegotiation Regulations, the following sentence will be added:

"The amount of profits to be elimnated hereby has been determined by taking into consideration the application of the $500,000 or the $25,000 limitation set forth in subsection (c) (6) of the Renegotiation Act as interpreted by paragraph 348.3 of the Renegotiation Regulations."

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
..... ** All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment due under this agreement from and after the due date thereof, whether original or accelerated.

5. *Additional Profits to be Eliminated.* If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to .....
..... of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. *Covenant Against Contingent Fees.* The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. *Officials Not To Benefit.* No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. *Discharge of Liability.* This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. *Renegotiation Rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. *Execution of Agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in ..... counterparts as of the day and year above written.

(Corporate Seal if a Corporation)

By .....
(Title of Officer)

** In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, payment of the excessive profits under such prime contracts to the Reconstruction Finance Corporation Price Adjustment Board is required. If such situation exists, insert here—"to the extent of $....., less the prorata portion of the tax credit, if any, applicable thereto, and by check to the order of and forwarded to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of $....., less the prorata portion of the tax credit, if any, applicable thereto."

(3) *Variations in Article 3 of the Standard Form.*

(a) If the contractor has not filed his Federal income or income and excess profits tax returns, or has filed the return but has not included in income as reported therein the profits to be eliminated, the following provisions should be used in lieu of the provisions of Article 3 as contained in the standard form of agreement:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code: The amount of profits agreed in Article 1 hereof to be eliminated has not been included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and, accordingly no tax credit under Section 3806 of the Internal Revenue Code is allowed against the amount of such profits to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of profits agreed in Article 1 hereof to be eliminated, or any part thereof, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(b) In some instances, a contractor will have included in income as reported in his tax returns less than all of the profits to be eliminated. In such a case Article 3 should be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. The Contractor represents that of the profits agreed in Article 1 hereof to be eliminated $..... were included in income in the Contractor's Federal income tax return (or income and excess profits tax returns) for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated. In the event, however, that Federal income or excess profits taxes shall be assessed upon the amount of the profits agreed in Article 1 hereof to be eliminated and which were excluded from income in the Contractor's income tax return (or income and excess profits tax returns) for said fiscal year, there will be allowed to the Contractor the credit, if any, to which it is entitled under Section 3806 of the Internal Revenue Code with respect to such profits."

(c) In the case of a partnership, the tax credit applicable against the amount of the profits to be eliminated is the aggregate of the credits to which each of the partners is entitled. Accordingly, in such a case Article 3 may be modified to read as follows:

"3. Tax Credit Under Section 3806 of the Internal Revenue Code. Each of the partners comprising the Contractor represents that his proportionate share of the profits, the amount of which is agreed in Article 1 hereof to be eliminated, was included in his income for his taxable year in which said fiscal year ended in computing his total tax in his Federal income tax return for said taxable year. Each of such partners has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which his taxes for such taxable year under Chapter 1 of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The aggregate of the amounts, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated."

(4) *Anti-Discrimination Clause.* Whenever a renegotiation agreement executed under the Act expressly purports to modify the terms of specified existing prime contracts with any of the Departments with respect to future deliveries, and the contract or contracts to be modified do not contain an anti-discrimination clause then the agreement shall include the following provision:

"Anti-discrimination.—(a) The Contractor, in performing the work required by this contract, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

"(b) The Contractor agrees that the provision of paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work, to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract."

(5) *Variations in Article 4 of the Standard Form.*

(a) If the profits to be eliminated are to be paid in installments, and the amount of the tax credit has not been ascertained, Article 4 may be drafted to read as follows:

"4. Terms of Payments. The Contractor agrees to pay to the Government the amount agreed in Article 1 hereof to be eliminated, less the tax credit, if any, applicable thereto pursuant to Article 3, as follows:

(a) $....., less the pro rata portion of the tax credit applicable thereto, within ten days after the Contractor shall have received a fully executed counterpart of this agreement or written notice of the amount of the tax credit, whichever is later; and

(b) $....., less the pro rata portion of the tax credit applicable thereto, on or before ..... or the due date of the first scheduled payment, whichever shall be later.

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment, due under this agreement from and after the due date thereof, whether original or accelerated."

(b) If the amount of the tax credit has been ascertained before the agreement is drawn, Article 4 may be drafted to read as follows:

"4. Terms of Payment. The Contractor agrees to pay to the Government the sum of ..... ($.....), being the difference between the amount agreed in Article 1 hereof to be eliminated and the amount of the tax credit referred to in Article 3 which has been determined to be applicable thereto, as follows:

$..... within ten days after the Contractor shall have received a fully executed counterpart of this agreement, and

$..... on or before .....; and

$..... on or before .....

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....
.....*

All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become, immediately due and payable, in the event of a default continuing for twenty days in the payment of

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, payment of the excessive profits under such prime contracts to the Reconstruction Finance Corporation Price Adjustment Board is required. If such situation exists, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and forwarded to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d)(5) of the Renegotiation Act. If, and as soon as, this order shall be deemed the determination of the War Contracts Price Adjustment Board, pursuant to subsection (d)(5) of the Renegotiation Act, then ..... (or such
(Secretary of a Department)
official or officials in such Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and Entered on

..... 194..

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.2 Notice of Order Under Delegated Authority Determining Excessive Profits.

NOTICE OF ORDER UNDER DELEGATED AUTHORITY
DETERMINING EXCESSIVE PROFITS

..... 194..

Gentlemen:

You are hereby notified by registered mail that pursuant to renegotiation under the Renegotiation Act, and in accordance with authority delegated by the War Contracts Price Adjustment Board, ... acting in its behalf, issued and entered an order on ..... 1944, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated. A copy of such order is enclosed herewith.

As provided in the Renegotiation Act such order may, in the discretion of the War Contracts Price Adjustment Board, be reviewed by such Board upon your request or upon its own motion, but unless such review shall have been initiated within the time prescribed by the Renegotiation Act, such order shall be deemed the determination of the War Contracts Price Adjustment Board.

Yours very truly,

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.3 Notice of Order Having Become the Determination of the War Contracts Price Adjustment Board.

NOTICE OF ORDER HAVING BECOME THE DETERMINATION OF THE WAR CONTRACTS PRICE ADJUSTMENT BOARD

..... 194..

Gentlemen:

You are hereby notified that no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on ..... 194.., pursuant to renegotiation under the Renegotiation Act, by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on .....

The payment date for discharge of your obligation under such order is ..... (Here insert date approximately 15 days from the date such order is deemed the determination of the War Contracts Price Adjustment Board.) Unless payment is made on or before such payment date, interest shall be paid at the rate of 6% per annum from such payment date.

Demand is hereby made that you repay, on or before such payment date, such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

**.....
Title
Acting on behalf of the
.....
(Secretary of a Department)

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

---

747. Action by the War Contracts Price Adjustment Board After Review.

747.1 Order.

ORDER BY THE WAR CONTRACTS PRICE ADJUSTMENT BOARD AFTER REVIEW

..... 194..

Upon review of an order issued and entered ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining

..... Dollars ($.....) as the amount of excessive profits which should be eliminated, derived by .... (hereinafter called the "Contractor") from contracts with the Departments and subcontracts as defined in the Renegotiation Act, for the Contractor's fiscal year ended ....., and after taking into consideration all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act, the War Contracts Price Adjustment Board has determined that ..... Dollars ($.....) represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for the Contractor's fiscal year ended ....., which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the profits of the Contractor derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, the War Contracts Price Adjustment Board hereby determines that the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is ..... Dollars ($.....).

This order constitutes a determination by the War Contracts Price Adjustment Board upon review as provided by subsection (d)(5) of the Renegotiation Act. The ..... (or such official or officials in such
Secretary of a Department

Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and entered on

..... 194..

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

747.2 Notice.

NOTICE OF DETERMINATION BY ORDER ENTERED BY WAR CONTRACTS PRICE ADJUSTMENT BOARD UPON REVIEW

..... 194..

Gentlemen:

You are hereby notified that upon review of an order dated, issued and entered on ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has issued and entered its order determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on .....

The payment date for discharge of your obligation under such order is ..... (Here insert date approximately 15 days from the date of such order.) Unless payment is made on or before such payment date, interest shall be paid at the rate of 6% per annum from such payment date.

Demand is hereby made that you repay, on or before such payment date, such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

** .....

Title

Acting on behalf of the

.....

(Secretary of a Department)

---

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

---

748. Withholding Orders.

748.1 Direction to a Contractor to Withhold.

..... 194

Gentlemen:

Pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has determined that $..... of the profits derived by ..... from contracts with the Departments and subcontracts for the fiscal year ended ..... are excessive profits which should be eliminated.

In accordance with the Renegotiation Act, the War Contracts Price Adjustment Board has authorized and directed the undersigned to eliminate such excessive profits. Accordingly, you are hereby directed to withhold for the account of the United States, pursuant to subsection (c)(2) of the Renegotiation Act, any and all amounts not in excess of $..... otherwise due or which shall become due from you to said .....

This direction shall be effective immediately and shall continue in effect until further notice from the undersigned.

You are directed further to report in writing to the undersigned within fifteen days from the date hereof the amount, if any, withheld by you for the account of the United States pursuant hereto.

Yours very truly,

.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

748.2 Direction to a Contractor to Pay Over Amounts Withheld.

..... 194..

Gentlemen:

Pursuant to direction issued under subsection (c)(2) of the Renegotiation Act you have, as you have reported to the undersigned, withheld for the account of the United States from amounts otherwise due to ....., the sum of $.....

You are hereby authorized and directed to pay over said sum to the United States by delivery to the undersigned of a check in said amount, payable to the order of the Treasurer of the United States.*

As provided in said subsection (c)(2) of the Renegotiation Act you are indemnified by the United States against all claims by said .... on account of such amount withheld.

Yours very truly,

.....
Title

Acting on behalf of the

.....
(Secretary of a Department)

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C.

[The next page is 771.]

Line 5d-1 *Cancellations Requested—Pending at WDPAB*

Information Source:

Plus—Cumulative total on last Cancellation Request Trans. Report SPRA I-2a5d1

Minus—Cumulative total on last Disapproved Cancellation Trans. Report SPRA I-2ax5d1x

Minus—Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2

Net—Cancellations requested—pending. Total to be reported on line 5d-1

Line 5d-2 *Cancellations Approved—Confirmed by WDPAB*

Information Source:

Cumulative total on last Approved Cancellation Trans. Report SPRA I-2b5d2 delivered to you by WDPAB

Line 5e *Sub-total of lines 5a-1 through 5d-2*

Line 6 GRAND TOTAL (Line 4e plus line 5e should agree with line 3)

Rev. 26 May 1944

751.5 Form No. SPRA I-B (War Department Price Adjustment Board "Status of Renegotiation Report").

SPRA I-B (Revised 1 August 1944)
Note: Figures in parentheses indicate net change since the previous report

1943

Close of Friday .....

STATUS OF RENEGOTIATION REPORT 1943 FISCAL YEAR ASSIGNMENTS
WAR DEPARTMENT PRICE ADJUSTMENT BOARD

SERVICE	Net Assignments	(A) Renegotiation Not Initiated %	(B) Statutory Renegotiation Begun %	(C) Bona Fide Oral Agreements Reached %	(D) Signed Agreements in Process %	(E) Total Assignments with the Services %	**(F) Total Assignments Delivered to WDPAB %	Memorandum Total Assignments in Column (F) Evidenced by Following Number of Agreements
Army Air Forces	( )	( )	( )	( )	( )	( )	( )	( )
Chemical Warfare	( )	( )	( )	( )	( )	( )	( )	( )
Engineers	( )	( )	( )	( )	( )	( )	( )	( )
Hawaii War Cont.	( )	( )	( )	( )	( )	( )	( )	( )
Ordnance	( )	( )	( )	( )	( )	( )	( )	( )
Power Procurement	( )	( )	( )	( )	( )	( )	( )	( )
Quartermaster	( )	( )	( )	( )	( )	( )	( )	( )
Signal Corps	( )	( )	( )	( )	( )	( )	( )	( )
Surgeon General	( )	( )	( )	( )	( )	( )	( )	( )
Transportation	( )	( )	( )	( )	( )	( )	( )	( )
War Dept. PAB	( )	( )	( )	( )	( )	( )	( )	( )
Total Current Report	( )	( )	( )	( )	( )	( )	( )	( )
Total Last Report								

** Note: Details of Column (F) are shown on attached Operations Report SPRA I-C.
Prepared by: Assignments and Statistics Branch, Statistics and Progress Section

751.6 Form No. SPRA I-BB (1943 Fiscal Year Assignments "Status of Renegotiation Report").

SPRA I-BB (Revised 1 August 1944)
Note: Figures in parentheses indicate net change since the previous report

1943

Close of Friday.....

STATUS OF RENEGOTIATION REPORT 1943 FISCAL YEAR ASSIGNMENTS

DEPARTMENT	Net Assignments	(A) Renegotiation Not Initiated %	(B) Statutory Renegotiation Begun %	(C) Bona Fide Oral Agreements Reached %	(D) Signed Agreements in Process %	(E) Total Assignments with the Depts. and Services %	**(F) Total Assignments Delivered or Reported to WDPAB %	Memorandum Total Assignments in Column (F) Evidenced by Following Number of Agreements
War Dept.	( )	( )	( )	( )	( )	( )	( )	( )
Navy PAB	( )	( )	( )	( )	( )	( )	( )	( )
Navy OGC	( )	( )	( )	( )	( )	( )	( )	( )
Maritime	( )	( )	( )	( )	( )	( )	( )	( )
R. F. C	( )	( )	( )	( )	( )	( )	( )	( )
Treasury	( )	( )	( )	( )	( )	( )	( )	( )
War Shipping	( )	( )	( )	( )	( )	( )	( )	( )
Total Current Report	( )	( )	( )	( )	( )	( )	( )	( )
Total Last Report								

** Note: Details of Column (F) are shown on attached Operations Report SPRA I-CC.

Prepared by: Assignments and Statistics Branch WDPAB, Statistics and Progress Section

751.7 Form No. SPRA I-C (War Department Price Adjustment Board "Operations Report").

SPRA I-C (Revised 1 August 1944)
Note: Figures in parentheses indicate net change from the previous report

1943

Close of Friday.....

OPERATIONS REPORT 1943 FISCAL YEAR ASSIGNMENTS

WAR DEPARTMENT PRICE ADJUSTMENT BOARD

DETAILS OF COLUMN (F) SPRA I-B COVERING 1943 FISCAL YEAR ASSIGNMENTS DELIVERED BY SERVICES TO WDPAB

	Army Air Forces	Chemical Warfare	Engineers	Hawaii War Cont.	Ordnance	Power Procure Officer	Quartermaster	Signal Corps	Surgeon Gen'l	Transportation	War Dept. PAB	Total (Column F of Status Report)	In Process at WDPAB	Completed by WDPAB
5a *Completed Settlements*														
For WDPAB Review	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
For WDPAB Approval	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
												(..)		
b *Impasse Cases*														
In Process at WDPAB	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
Completed—Agreement	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
Completed—Unilateral	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
												(..)		
c *Completed Clearances*														
For WDPAB Review	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
For WDPAB Approval	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
												(..)		
d *Cancellations*														
Requested—Pending	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	..
Approved by WDPAB	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
												(..)		
Total Current Report	....	....	....	....	....	....	....	....	....	....	....	.....(..)	....	....
Total Previous Report	....	....	....	....	....	....	....	....	....	....	....	.....	....	....
Net Change	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	.....(..)	(..)	(..)

Prepared by: Assignments and Statistics Branch, Statistics and Progress Section

751.8 Form No. SPRA I-CC (1943 Fiscal Year Assignments "Operations Report").

SPRA I-CC (Revised 1 August 1944)
Note: Figures in parentheses indicate net change from the previous report

OPERATIONS REPORT 1943 FISCAL YEAR ASSIGNMENTS

1943

Close of Friday .....

DETAILS OF COLUMN (F) SPRA I-BB COVERING 1943 FISCAL YEAR ASSIGNMENTS DELIVERED BY SERVICES AND REPORTED BY DEPARTMENTS TO WDPAB

	War Department	Navy PAB	Navy OGC	Maritime	RFC	Treasury	War Shipping	Total (Column (F) of Status Report)	In Process at WDPAB	Completed by WDPAB
5a *Completed Settlements*	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
b *Impasse Cases*										
In Process at WDPAB	.....	XX	XX	XX	XX	XX	XX	.....(..)	.....	.....
Completed—Agreement	.....	XX	XX	XX	XX	XX	XX	.....(..)	.....	.....
Completed—Unilateral	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
								(..)		
c *Completed Clearances*	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
d *Cancellations*										
Requested—Pending	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
Approved by WDPAB	.....	.....	.....	.....	.....	.....	.....	.....(..)	XX	.....
								(..)		
Total Current Report	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
Total Previous Report	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Net Change	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)

Prepared by: Assignments and Statistics Branch WDPAB, Statistics and Progress Section

752. Statement to Be Furnished Contractor.

752.1 General Instructions.

(1) Subsection (c) (1) of the Renegotiation Act of 1943 requires that whenever the War Contracts Board makes a determination by agreement or order, there must be furnished to the contractor, at his request, a statement showing the determination of excessive profits, the facts used as a basis therefor and the reasons for such determination.

(2) The manner in which and the time at which the statement will be given to the contractor are described in paragraph 520 and following, of these Regulations.

(3) The statement cannot be used in The Tax Court of the United States as proof of the facts or conclusions stated therein.

(4) The statement is divided into four principal parts:

(a) Designation of the contractor and the fiscal year under review.

(b) Determination of excessive profits.

(c) Summary of the relevant facts upon which the determination is based.

(d) Reasons for the determination.

752.2 Form of Statement and Specific Instructions as to Its Preparation (Statutory).

(1) Designation of the Contractor and Fiscal Period

To: .....
(Contractor's name and address)

Fiscal Year .....

In accordance with the provisions of subsection (c)(1) of the Renegotiation Act, you are hereby furnished a statement showing, for your fiscal year above set forth, the determination of excessive profits for said fiscal year and the facts and reasons upon which the determination is based.

If the determination is by order other than an order of the War Contracts Price Adjustment Board, the following clause will be inserted at this point:

> "This statement is final only in the event that the determination by order to which it relates is final."

(2) Determination of Excessive Profits.

Pursuant to the provisions of the Renegotiation Act, it has been determined by ....., dated .....,
(order) (agreement)
that, of the profits received by or accrued to you during said fiscal year under contracts or subcontracts subject to renegotiation, the amount of $..... constitutes profits which should be eliminated.

Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Brig. Gen. Albert J. Browning, Chairman
(War Department)
Room 5D675, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3119

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Mr. Kenneth F. Clark
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5, D. C.

Tel. Executive 3340
Ext. 1047

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500
Ext. 71783

791.3 Office of General Counsel.

War Contracts Price Adjustment Board
Attention: Mr. Frederick W. R. Pride, General Counsel
Room 112, Premier Building
718 18th Street, N. W.
Washington 25, D. C.
Tel. Republic 7400
Ext. 62022 or 2029

791.4 Assignment Office.

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C.
Tel. Republic 6700
Ext. 73678

791.5 Pentagon Office.

Room 3E 592, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73636

792. Departmental Price Adjustment Boards.

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 25, D. C.
Tel. Republic 7400
Ext. 5169 or 62729

Treasury Department Price Adjustment Board
Attention: Captain H. C. Maull, Jr., Chairman
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Maritime Commission Price Adjustment Board
Attention: Commander A. G. Rydstrom
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5 D. C.

Tel. Executive 3340
Ext. 606 or 607

War Shipping Administration Price Adjustment Board
Attention: Mr. James L. Murphy, Chairman
39 Broadway
New York 6, New York

Tel. Whitehall 3-8000

Reconstruction Finance Corporation Price Adjustment Board
Attention: Mr. Charles T. Fisher, Jr., Chairman
Lafayette Building, 811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

793. War Department Price Adjustment Sections.

793.1 Headquarters.

Price Adjustment Branch
Control Office
AC/AS M. M. & D. Army Air Forces
Room 5C 964, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Exts. 72209
4420
4577

Price Adjustment Office
Materiel Command, Army Air Forces
Wright Field
Dayton, Ohio

Tel. Kenmore 7111
Exts. 22135
23292
25225

The Chief of Chemical Warfare
Attention: Major Robert M. Estes
Purchase Policies Branch
Baltimore Sub-Office, OC CWS
200 West Baltimore Street
Baltimore 1, Maryland

Tel. Lexington 0710

The Chief of Engineers
Attention: Mr. H. W. Loving
Price Adjustment Section
Room 5160, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 76225

The Chief of Ordnance
Attention: Major John M. Marble
Purchase Policy Section
Room 5D 400, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2283

The Quartermaster General
Attention: Lt. Col. H. F. Colt
Price Adjustment Section
Room 2327, Tempo. B.,
2nd and Q Streets, S. W.
Washington 25, D. C.

Tel. Republic 6700
Ext. 3744 or 6485

The Chief Signal Officer
Attention: Mr. Wilfred Goodwyn
Price Adjustment Section
Room 2C 285, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73278

The Surgeon General
Attention: Lt. Col. Lee I. Park
Renegotiation Division
Room 518, Maritime Building
1818 H Street, N .W.
Washington 25, D. C.

Tel. Republic 6700
Ext. 78455

The Chief of Transportation
Attention: Col. James F. Mitchell, Jr.
Price Adjustment Section
Room 3A 670, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 4505

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 25, D. C.
Tel. Republic 7400.
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
21st Floor
100 West Monroe Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61468.

(2) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(3) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 53851.

(4) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 916, 610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 3860

(5) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Tucker 1351

794.3 **Price Revision Division.**

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. **Related Offices.**

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. **War Department Patent Royalty Adjustment Offices.**

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Pacific Mutual Building, Los Angeles 14, California,
Tel. Michigan 6321

Lincoln Bank Building, 421 W. Market Street, Louisville 2, Kentucky,
Tel. Wabash 6771

McKnight Building, Minneapolis 1, Minnesota,
Tel. Geneva 8601

Nashville Trust Company Building, Union Street, Nashville 3, Tennessee,
Tel. LD 48 or 5-2182

Union Building, 837 Gravier Street, New Orleans 12, Louisiana,
Tel. Canal 2701

Federal Reserve Bank Bldg., 33 Liberty Street, New York 5, N. Y.,
Tel. Rector 2-8100

Cotton Exchange Building, Oklahoma City 2, Oklahoma,
Tel. LD 647 or 2-8541

Woodmen of the World Bldg., Omaha 2, Nebraska,
Tel. Jackson 8200

1528 Walnut Street, Philadelphia 2, Pennsylvania,
Tel. Kingsley 1500

Pittock Block, Portland 5, Oregon,
Tel. Atwater 6401

Richmond Trust Building, 7th and Main Streets, Richmond 19, Virginia,
Tel. Richmond 3-6741

Landreth Building, 320 N. Fourth Street, St. Louis 2, Missouri,
Tel. Garfield 3750

Dooly Building, Salt Lake City 1, Utah,
Tel. Salt Lake City 5-7493

Alamo National Building, San Antonio 5, Texas,
Tel. Cathedral 1461

200 Bush Street, San Francisco 4, California,
Tel. Exbrook 6206

Dexter Horton Building, Seattle 4, Washington,
Tel. Main 1080

Columbia Building, Spokane 8, Washington,
Tel. Main 5111

798. War Department Power Procurement Officer.

798.1 Headquarters.

Utilities Price Adjustment Section,
Office, Chief of Engineers,
Attention: Major George P. Steinmetz, Chief,
5004 New War Department Building,
Washington 25, D. C.

Tel. Republic 6700
Ext. 79994 or 76210

798.2 Field Offices.

Commanding General, First Service Command,
Office, Service Command Engineer,
Attention: Mr. W. K. Lewellen,
808 Commonwealth Avenue,
Boston 15, Massachusetts.

Tel. Beacon 1300
Ext. 430

Commanding General, Second Service Command,
Office, Service Command Engineer,
Attention: Major N. H. Davidson,
270 Broadway,
New York 7, New York.

Tel. Barclay 7-1616

Commanding General, Third Service Command,
Office, Service Command Engineer,
Attention: Mr. H. C. Fleming,
101 East Fayette Street,
Baltimore 2, Maryland.

Tel. Plaza 8060

Commanding General, Fourth Service Command,
Office, Service Command Engineer,
Attention: Major R. B. Lapsley,
P. O. Box 4114,
Atlanta, Georgia.

Tel. Jackson 6180
Ext. 85

Commanding General, Fifth Service Command,
Office, Service Command Engineer,
Attention: Major L. F. Dabe,
Building 62, Fort Hayes,
Columbus 18, Ohio.

Tel. Columbus 2171
Ext. 635

Commanding General, Sixth Service Command,
Office, Service Command Engineer,
Attention: Capt. V. A. Thieman,
20 No. Wacker Drive,
Chicago, Illinois.

Tel. Randolph 1311

Commanding General, Seventh Service Command,
Office, Service Command Engineer,
Attention: Major R. H. Bradford,
Federal Building, 15th & Dodge Streets,
Omaha, Nebraska.

Tel. Jackson 7900
Ext. 233

Commanding General, Eighth Service Command,
Office, Service Command Engineer,
Attention: Major D. W. Reeves,
Santa Fe Building,
Dallas 2, Texas.

Tel. LD 930
Ext. 771

Commanding General, Ninth Service Command,
Office, Service Command Engineer,
Attention: Major W. C. Sadler,
Fort Douglas, Utah.

Tel. Fort Douglas 5-6611

799. War Shipping Administration.

799.1 War Shipping Administration Price Adjustment Board.

(1) New York Division
39 Broadway
New York 6, New York.

Tel. Whitehall 3-8000

(2) Pacific Coast Division
427 Mills Tower Building
220 Bush Street
San Francisco 4, California.

Tel. Garfield 3715

[The next page is 801.]

Section 4

EXEMPTIONS

841. **Raw Material Exemption.** Pursuant to subsection (i) (2) of the 1943 Act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (i) (1) (B) of the 1943 Act.

(1) The term "exempted products", as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.

Alumina; aluminum sulfate; aluminum ingots and pigs.

Asphalt, natural.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide; antimony sulfide.

Arsenic, crude; arsenic powder; arsenious oxide (white arsenic).

Asbestos rock; asbestos fibre.

Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.

Beryl ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.

Bismuth metal.

Borax.

Cadmium flue dust; cadmium oxide; cadmium balls and slabs.

China clay; kaolin; fire clay; brick and tile made from clays other than kaolin, china and fire clay.

Chlorine and hydrogen produced directly by electrolysis of salt brine.

Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.

Coal, prepared; run-of-mine coal.

Cobalt oxide; cobalt anodes, shot and rondelles.

Columbium ore and concentrates; columbium oxide; ferrocolumbium.

Copper ore, crude; copper ore, concentrated; copper matte; blister copper; copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.

Corundum ore and concentrates; corundum grain.

Cryolite ore and concentrates.

Diaspore; diaspore brick.

Diatomaceous silica, lump, block, brick and powder.

Feldspar, crude and ground.

Ferrosilicon.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Fuller's earth.

Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.

Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.

Gypsum, crude; calcined gypsum.

Indium metal.

Industrial diamonds.

Iridium metal, including ingot and powder.

Iron ore, crude; pig iron.

Kyanite ore and concentrates; kyanite brick.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Limestone; crushed limestone.

Magnesite; dead burned magnesite.

Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.

Mercury ore; mercury metal.

Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.

Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.

Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.

Monel ore; monel matte; monel ingots, pigs, and shot, produced from monel matte.

Natural gasoline; casinghead gasoline; residue gas.

Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Osmium metal, including ingot and powder.

Palladium metal, including ingot and powder.

Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.

Platinum ore and concentrates; platinum metal, including ingot and powder.

Pumice, lump.

Quartz crystal, raw.

Radium bromide; radium sulfate; radium gas.

Rhodium metal, including ingot and powder.

Ruthenium metal, including ingot and powder.

Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.

Sea shells; oyster shells; clam and reef shells.

Selenium metal.

Silver, refined, including bars, shot, powder and grains.

Sodium aluminate.

Stone, rough dimension.

Sulfur, crude.

Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).

Standing timber, logs, logs sawed into length, and logs with or without bark.

Talc, crude, ground and sawed.

Tantalum ore and concentrates; tantalum double fluoride.

Tellurium metal.

Tin ore and concentrates; refined pig tin.

Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide; ferrotitanium.

Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide.

Uranium ores and concentrates; uranium oxide.

Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.

Whiting; chalk lump.

Zeolites derived from Glauconite.

Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.

Zirconium ores and concentrates.

(2) Subject to the provisions of paragraph 3 hereof, it is determined that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use" within subsection (i) (1) (B) of the

Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Vegetable seeds	Not processed beyond the form or state at which they may be used as seeds
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap; non-ferrous metal scrap; woolen waste, including woolen rags and clips, new and old; scrap rubber; waste paper; cotton or linen rags, including old bagging and old rope; and textile waste; sold by dealers or brokers.

(**Comment**: The exemption of these articles as standard commercial articles applies only to dealers and brokers in these articles and is not to be construed as affecting, in any way, users of these articles (in particular, manufacturers who use these articles), nor does it affect manufacturers who may produce and sell these articles as a by-product in the course of their operation. Neither does the exemption cover sales of these articles in any form other than as scrap or waste.)

(b) Refined sugar (cane or beet);

(c) Textile bags (made of burlap or cotton);

(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.

(e) Paper of the following types and grades, sold by paper mills: Groundwood and free sheet uncoated and coated papers (including but not limited to free sheet and groundwood offset, envelope and tablet papers); Mimeograph and duplicating (both groundwood and free sheet); Bond, writing and ledger, including opaque circular; Manifold and onion skin; Cover and text; Index and Bristol; Map paper; Post card paper; Blue print base stock.

(f) Paper and paper products sold by merchants.

(**Comment**: This exemption does not apply to sales of paper or paper products which have been manufactured, converted or processed by the seller or by any person under the control of or controlling or under common control with the seller.)

(g) Ready mixed concrete.

(h) Portland cement.

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☆U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPPLEMENT RR-5

WAR CONTRACTS PRICE ADJUSTMENT BOARD

WASHINGTON

RENEGOTIATION REGULATIONS

for fiscal years ending after June 30, 1943

6 October 1944

SUMMARY OF IMPORTANT AMENDMENTS

The amendments made by this revision are summarized below. The principal changes are:

1. Transfer of File in Reassigned Cases. Paragraphs 205.1 and 205.2 are amended to provide that reassignment requests shall contain information as to the location of the file for the fiscal year under review and that upon request the file shall be transmitted to the proper field or section office of the assignee. See also revision of Form No. 103 at paragraph 703.3 adding a paragraph to the reassignment request form.

2. Army Post Exchange and Army Exchange Service Contracts. Paragraph 332.6 amended to provide that contracts entered into by the Quartermaster Corps are renegotiable even though some or all of the articles contracted for are assigned or resold to an Army Post Exchange or the Army Exchange Service.

3. Contracts Involving Named Departments and Departments or Agencies other than Named Departments. Addition of paragraph 332.10 providing that the renegotiability of a contract depends upon whether the contract is with a named Department and not upon whether a named Department receives delivery of, or pays for, the articles purchased.

4. Definition of Construction Contract. Paragraphs 346.2 (1) (b) and 346.2 (2) are amended in order to interpret the meaning of a contract "for the construction of any building, structure, improvement, or facility" as used in subsection (i) (1) (E) of the 1943 Act. Paragraph 355.3 (1) is likewise amended to amplify the definition of a construction contract exempted under subsection (i) (4) (E) of the 1943 Act.

5. Subcontracts for Packaging or Containers of Exempt Articles. Paragraph 333.4 (1) amended and paragraphs 344.5 and 347.2 (3) added to provide that subcontracts for the furnishing of packaging materials or containers in which there are delivered to a Department materials or products which are exempt from renegotiation under the provisions of subsection (i) (1) (B) or (C) of the 1943 Act are exempt under the provisions of subsection (i) (1) (F) of the 1943 Act.

6. Routing of Renegotiation Agreement and Tax Credit Letter to Reconstruction Finance Corporation. Paragraph 502.5 (3) is amended to provide that in those cases wherein the RFC has an interest in the refund, the authenticated copy of the renegotiation agreement and tax credit computation letter shall be forwarded directly to the RFC Price Adjustment Board and not through the Assignments and Statistics Branch, Renegotiation Division, ASF.

7. Article 5 of Standard Form of Agreement. Paragraph 502.6 is amended to provide that where the excessive profits to be refunded are limited by the floor provisions, Article 5 should be omitted from the Standard Form of Agreement. See also the footnote added at page 765A relative to Article 5.

8. Interest on Unilateral Determinations. Subparagraph (3) is added to paragraph 626.2 relative to interest on unilateral determinations from and after the date fixed in the demand. See also amendments to paragraphs 746.3 and 747.2.

9. Standard Commercial Articles Exemption. Addition of item (i) at paragraph 845.

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FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8
Tuesday, August 15, 1944 9 Federal Register 9907	Changes and additions in Renegotiation Regulations contained in Revision 9
Tuesday, September 26, 1944 9 Federal Register 11764	Changes and additions in Renegotiation Regulations contained in Revision 10

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included immediately in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
123—124	123—124	Paragraph 128 amended to provide that the Renegotiation Regulations are currently available from the Superintendent of Documents.
213—214	213—214	(1) Addition at the end of the 4th sentence of paragraph 205.1 of a provision relative to routing of files in the case of reassignments. (2) Addition of a sentence at the end of paragraph 205.2 providing in the case of a reassignment for transmittal of file directly to the field or section office.
301—304	301—304	Changes in Table of Contents for Chapter III.
331—338	331—338	(1) Amendment of paragraph 332.6 relative to renegotiability of Army Post Exchange and Army Exchange Service Contracts. (2) Addition of paragraph 332.10 relative to renegotiability of contracts with a named Department whether a named Department receives delivery of, or pays for, the articles purchased. (3) Amendment of last sentence of paragraph 333.4 (1) relative to exemption of packaging materials and containers. (4) Addition of two references to the reference already existing at the end of paragraph 335.2 (6).

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
347B—348 (6 pages)	347B—349 (8 pages)	(1) Addition of paragraphs 344.5 and 347.2 (3) relative to exemption of packaging materials and containers. (2) Amendments of paragraphs 346.2 (1) (b) and 346.2 (2) relative to the definition of a construction contract.
351B	351B	Addition of sentence at end of paragraph 352.2 (3) containing a reference to the list of Exempted Foods at paragraph 843.
353—356	353—357	(1) Amendment of paragraph 355.3 (1) (a) relative to a definition of a construction contract. (2) Addition of a sentence at the end of paragraph 355.3 (1) containing a statement of exemption under subsection (i) (4) of the Renegotiation Act.
383B—384	383B—384	Effective date of amended regulations issued by the Director of Economic Stabilization changed from August 27, 1943 to August 28, 1943 in paragraph 382.3 (2).
513—513B	513—513B	(1) Third sentence of paragraph 502.5 (3) amended to provide that in cases in which RFC has an interest in the refund, the authenticated copies of the renegotiation agreement and tax credit letter shall be forwarded directly to the RFC. (2) A sentence added at end of paragraph 502.6 to provide that when the excessive profits to be refunded are limited by the floor provisions, Article 5 should be omitted from the Standard Form of Agreement.
625	625	Addition of subparagraph (3) to paragraph 626.2 relative to interest on unilateral determinations.
731—732	731—732	Item 3 added to Form No. 103 (Reassignment Request) stating location of the file for the fiscal year under review.
765—765A	765—765A	(1) Addition of reference at end of first footnote at page 765A. (2) Addition of a second footnote at page 765A relative to omission of Article 5 in Standard Form of Agreement (paragraph 741.1).
767—767F	767—767F	(1) In the last sentence of the fourth paragraph of paragraph 746.1 the addition after the word "Contractor" of the words "for said fiscal year." (2) Amendment of the last two paragraphs of the Notice of Order printed at paragraph 746.3 relative to interest. (3) Insertion of reference at end of first footnote to paragraph 746.3. (4) Amendment of the last two paragraphs of the Order printed at paragraph 747.2 relative to interest.

OVER→

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(5) Insertion of reference at end of first footnote to paragraph 747.2. (6) Insertion of reference at end of footnote to paragraph 748.2.
791—792	791—792	Addition in paragraph 792 of Office of the General Counsel, Navy Department.
795B—796	795B—796	(1) Deletion from paragraph 794.2 of Office of the General Counsel, Navy Department. (2) Numbering from (1) to (4) rather than from (2) to (5) of the divisional offices of the Office of the General Counsel, Navy Department. (3) Correction of address of the Chicago Divisional Office of Office of the General Counsel, Navy Department.
849—850	849—850	(1) Insertion of the word "book" between the words "coated" and "papers" in item (e) of the list of Standard Commercial Exemptions at paragraph 845. (2) Addition of item (i) to list of Standard Commercial Article Exemptions at paragraph 845.

★When you have filed these pages, place this instruction letter in the back of your binder.

tions Act, 1944 (Public 108, 78th Congress, approved July 1, 1943), and by Public 149 (78th Congress, approved July 14, 1943), and as further amended by Section 701 (b) of the Revenue Act of 1943 (Public 235, 78th Congress, enacted February 25, 1944) to the extent that Section 701 (d) of the Revenue Act of 1943 makes the amendments made by Section 701 (b) effective as if they had been a part of Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, on the date of its enactment, April 28, 1942.

122.12 "Renegotiable Business", "Renegotiable Sales", and "Non-renegotiable Business". The terms "renegotiable business" and "renegotiable sales" mean the aggregate business of a contractor or subcontractor under contracts with the Departments and subcontracts which are subject to statutory renegotiation. The term "non-renegotiable business" means any business of a contractor other than "renegotiable business".

122.13 "Secretary". The term "Secretary" means the Secretary of a Department and means "Secretary" as defined in subsection (a) of the Renegotiation Act of 1943 as follows:

> "(2) In the case of the Maritime Commission, the term 'Secretary' means the Chairman of such Commission, in the case of the War Shipping Administration, the term 'Secretary' means the Administrator of such Administration, and in the case of Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation, and Rubber Reserve Company, the term 'Secretary' means the board of directors of the appropriate corporation."

122.14 "Section". The term "Section" means a Price Adjustment Section of the War Department, except where a different meaning appears from the context.

122.15 "Service". The term "Service" means the Army Air Forces and the Technical Services of the Army Service Forces.

122.16 "Statutory Renegotiation". The term "statutory renegotiation" means renegotiation pursuant to the 1943 Act.

122.17 "War Contracts Board". The term "War Contracts Board" means the War Contracts Price Adjustment Board established under the 1943 Act.

123. Arrangement of Renegotiation Regulations.

123.1 Organization. For convenience these regulations are divided into Chapters, each of which deals with a specified topic. Each Chapter is divided into several Sections, each of which contains a series of numbered paragraphs dealing with the same subject.

123.2 Numbering. The numbering of individual paragraphs is not consecutive, and is designed to permit additional paragraphs to be inserted later within the appropriate Chapter and Section. The number of a particular paragraph shows the Chapter and Section where it is found and also whether it is subordinate to a preceding paragraph. The first digit of the number indicates the Chapter and the second digit

the Section in which the paragraph is found. Thus, paragraphs in Chapter I run from 100 to 199; those from 101 to 119 are under Section 1, those from 120 to 129 are under Section 2, etc. Where the number of a paragraph ends with a digit preceded by a decimal point (as 123.2), this indicates that it is part of the general subject covered by the basic paragraph (as 123).

123.3 **Citations.** Since the number of any paragraph indicates its place in these regulations, a paragraph may be referred to by citing its number only, and it is not necessary to refer to the Chapter or Section or page in these regulations where it appears. These regulations will be called the Renegotiation Regulations, which may be abbreviated as RR in referring to paragraphs; thus this paragraph may be cited as RR 123.3.

124. **Amendments and Additions.**

(1) When amendments or additions to these regulations are adopted by the War Contracts Board, they will become effective at once unless otherwise specified, but will not affect the validity of any determination theretofore made in accordance with prior regulations.

(2) All changes in these regulations and all additions to them will be issued in the form of additional or revised pages for this document. These regulations in loose-leaf form will be placed in the hands of interested personnel in the Departments. New and revised pages will be sent from time to time to the Departments for distribution to holders of the Renegotiation Regulations within the Departments.

125. **Changes in Interpretations.** The regulations and interpretations of the statute in this document reflect the present judgment of the War Contracts Board and are subject to such revision as from time to time may appear desirable.

126. **Federal Register.** These regulations are being published in the Federal Register. Changes and additions will be so published from time to time as directed by the War Contracts Board.

127. **Official Copies.** Official copies of the statutes referred to herein may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C. Official copies of Executive Orders cited herein are set out in the Federal Register, which may also be procured from the Superintendent of Documents.

128. **Copies of Renegotiation Regulations.** The Renegotiation Regulations, along with current supplements embodying additions and amendments thereto as published in the Federal Register, are available in loose leaf form for a subscription price of $2.00 from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.

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renegotiation. Departments and Services should suggest reassignment of contractors when, because of the nature of their products, it appears that efficiency of renegotiation procedure would be promoted thereby. Such reassignments should be suggested notwithstanding the fact that the predominant interest in the particular contractor's business may lie with the Department or Service suggesting the reassignment (see paragraph 205.1 and form in paragraph 703.3).

202.3 Brokers and Agents. Brokers and agents subject to renegotiation by virtue of subsection (a) (5) (B) of the 1943 Act and machine tool dealers will ordinarily be assigned to the Services and Sales Renegotiation Section, Procurement Legal Division, Office of the Under Secretary of the Navy, with the exception of those engaged in the sale of textiles and food stuffs, who will ordinarily be assigned to the Price Adjustment Section of The Quartermaster General.

203. Selection of Contractors for Assignment.

203.1 Contractors Previously Assigned. Generally contractors who were assigned for 1942 fiscal years have been assigned for 1943 fiscal years to the same Department or Service which held the 1942 assignment. Those assignments which were issued prior to the effective date of the 1943 Act on behalf of the Joint Board have been confirmed by the War Contracts Board. Such assignments are subject to reassignment on the basis of industry or product classification or because of substantial change in predominant interest.

203.2 Contractors Not Previously Assigned. In order that unnecessary assignments may be avoided, initial assignments will not ordinarily be made without the prior receipt and consideration by the Assignments and Statistics Branch on behalf of the War Contracts Board of the information required in the appropriate "Standard Form of Contractor's Report" (see paragraphs 222 and 701). Exceptions to this rule will be made at the request of any Agency authorized to conduct renegotiation upon an indication of urgency in point of time, lack of necessity for preliminary review, or other considerations deemed appropriate. Unless the required preliminary information is available through mandatory filing or otherwise, it will be obtained by the Assignments and Statistics Branch on behalf of the War Contracts Board by causing to be sent to the contractor a "Letter of Preliminary Inquiry" together with the appropriate "Standard Form of Contractor's Report" (see paragraphs 222, 701 and 702.1). In the event that the contractor fails to make satisfactory response within a reasonable time to the "Letter of Preliminary Inquiry," the case may be assigned for renegotiation to the Department or Service believed appropriate. Should the information required by the "Standard Form of Contractor's Report" be received by the War Contracts Board subsequent to the issuance of the assignment, the assignment may be reassigned or cancelled if such action be found by the War Contracts Board to be appropriate; otherwise, the information will be transmitted to the assignee Department or Service.

203.3 Identification of Contractors Not Previously Assigned. The identification of contractors not previously assigned will be accomplished principally through their filing mandatory financial statements

in conformity with the requirements of the first sentence of subsection (c)(5)(A) of the 1943 Act (see paragraph 222). The War Contracts Board may use other sources of information. The Departments and Services may suggest to the War Contracts Board, by means of Form 101 (see paragraph 703.1), names of contractors to be considered for assignment at a time earlier than that at which the mandatory financial statements may be received. Such suggestions should be limited to cases as to which there is substantial reason to believe that early institution of renegotiation proceedings is advisable or required.

203.4 **Reports as to Brokers and Agents.** Information coming to the attention of a Department or Service indicating that commissions or other compensation may have been or might be paid or accrued to a broker or agent subject to renegotiation under subsection (a) (5) (B) of the 1943 Act or (a) (5) (ii) of the 1942 Act will be reported to the Services and Sales Renegotiation Section, Procurement Legal Division, Navy Department, Washington 25, D. C., and to the War Contracts Price Adjustment Board, Assignments and Statistics Branch, Room 3D 573, The Pentagon, Washington 25, D. C. (see paragraph 202.3).

204. **Form of Assignments.** Assignments will be issued on Form 102 (shown in paragraph 703.2) or by endorsements on Form 101 (see paragraph 703.1) or by other written notification to the assignee Department or Service.

205. **Reassignment of Cases.**

205.1 **When Cases Reassigned.** The War Contracts Board will reassign a case to another Department or Service if it appears that efficiency of renegotiation procedure will be promoted thereby. Such reassignments may be based upon inter-company affiliations or transactions, substantial predominance of interest or the principle of assignment by product classification. Reassignments may be suggested by the Departments, Services, or other Agencies. The use of the form set forth at paragraph 703.3 is recommended for this purpose, and all requests for reassignment shall contain a statement of the name and address of the office at which the file for the fiscal year under review may be obtained. Reassignments may also be initiated by the War Contracts Board or by the Assignments and Statistics Branch of its own motion. A case will not be withdrawn from any Department without that Department's approval except by express direction of the War Contracts Board, nor will a reassignment become effective if objection to such reassignment is filed in writing by a Department with the Assignments and Statistics Branch within 10 days following receipt of such reassignment unless such objection is overruled by action of the War Contracts Board. The Assignments and Statistics Branch may withdraw an assignment from a War Department Service without its approval.

205.2 **Transfer of Information on Reassignments.** Upon notice that a case has been reassigned, there will be transmitted directly to the Department or Service holding the reassignment all information obtained from the contractor relating to the fiscal period subject to renegotiation. Upon request, the file will be transmitted directly to the field or section office to which the reassignment is made.

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Section 3

CONTRACTS AND SUBCONTRACTS WITHIN THE SCOPE OF THE 1943 ACT

330. Scope of Section. This and the following Sections 4 and 5 deal with the contracts and subcontracts subject to renegotiation. This Section 3 discusses the kinds of prime contracts and subcontracts which are within the 1943 Act, aside from exemptions, and the following Sections cover the exemptions (mandatory and permissive, respectively) from renegotiation.

331. General Coverage of 1943 Act.

331.1 Statutory Provision. Subsection (c) of the 1943 Act confers the basic authority to renegotiate, and paragraph (6) of subsection (c), which deals with its application, provides that, with certain exceptions, it shall apply "to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943, and whether or not such contracts or subcontracts contain the provisions required under subsection (b)."

331.2 Contracts Without Renegotiation Clauses. Subsection (b) of the 1943 Act requires the insertion of renegotiation provisions in certain contracts and subcontracts and provides that these provisions may be incorporated by reference to such subsection. However, both subsections (b) and (c) provide that renegotiation under subsection (c) applies whether or not the contract or subcontract contains such provisions unless such contract or subcontract is specifically excluded or exempted.

331.3 Exemptions and Exclusions. Subsections (c) (6) and (i) of the 1943 Act provide for various exclusions and exemptions of contracts and subcontracts from renegotiation. These are discussed in detail in Sections 4 and 5 of this Chapter.

331.4 Interpretation. The 1943 Act is construed to be inapplicable to sales by the Departments and contracts therefor.

332. Contracts with the Departments.

332.1 General. Subject to the exemptions contained in the 1943 Act, all contracts made by the War and Navy Departments, the Maritime Commission, the War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Rubber Reserve Company, and Metals Reserve Company are subject to renegotiation. Contracts of the Treasury Department subject to renegotiation include—

(1) Contracts placed under Section 201 of Title II of the First War Powers Act, 1941, 55 Stat. 839. These are principally lend-lease contracts which may be identified by the symbols "DA-TPS" preceding the contract number.

(2) Contracts for strategic and critical materials placed under the authority of the Act of June 7, 1939, 53 Stat. 811. Such contracts

made after March 1, 1943 may be identified by the symbols "SCM-TPS" preceding the contract number.

(3) Contracts for supplies for refugee relief under the Red Cross program, placed under the authority contained in Title II of the Third Supplemental National Defense Appropriation Act, 1942, 55 Stat. 817, or in section 40 of the Emergency Relief Appropriation Act, fiscal year 1941, 54 Stat. 627, and Title I of the Second Deficiency Appropriation Act, 1942, approved July 2, 1942. Such contracts may be identified by the symbols "TRR" preceding the contract number.

332.2 **Treasury Procurement Schedule of Supplies.** Contracts of the Procurement Division of the Treasury Department of the type regularly made by it in the ordinary course of business prior to the war period, as such, are not subject to renegotiation unless negotiated under authority contained in Title II of the First War Powers Act, 1941. However, purchase orders, issued by other Departments under General Schedule of Supplies Contracts, which are entered into by the Procurement Division of the Treasury Department on behalf of all departments and establishments of the Government, are considered as subject to the provisions of the 1943 Act. Purchase orders issued by the Treasury Department itself under such contracts are also considered as subject to the provisions of the 1943 Act if such purchases are for lend-lease or for the Red Cross program.

332.3 **Lend-Lease Contracts.** All so-called lend-lease contracts entered into by any of the Departments having renegotiation authority are subject to the provisions of the 1943 Act. However, lend-lease contracts entered into by any other department or agency of the Government are not subject to renegotiation under existing law.

332.4 **Cost-Plus-Fixed-Fee Contracts.** Cost-plus-fixed-fee contracts are subject to renegotiation unless otherwise exempt. The treatment of such contracts in renegotiation is discussed in paragraph 304.

332.5 **Management Fee Contracts.** Contracts providing for a management fee are subject to renegotiation.

332.6 **Army Post Exchange and Army Exchange Service Contracts.** Contracts with Army Post Exchanges or with the Army Exchange Service are not subject to statutory renegotiations. Contracts entered into by the Quartermaster Corps are War Department contracts and are subject to renegotiation even though some or all of the articles contracted for are intended to be and are assigned to or resold to an Army Post Exchange or the Army Exchange Service.

332.7 **Navy Ship's Service Stores Contracts.** Ship's service activities, including ship's service stores, are conducted by Navy personnel but their operations do not involve Navy Department funds. Their contracts are not Navy Department contracts and are not subject to renegotiation. Ship's stores, as distinguished from ship's service stores, are operated with Navy Department funds. Their contracts are Navy Department contracts and are subject to renegotiation.

332.8 **Panama Canal Contracts.** Contracts with the Panama Canal Zone are subject to statutory renegotiation. Under the Panama Canal Act (48 U. S. C. 1306), the President in time of war may designate an Army officer to assume exclusive authority and jurisdiction over the Panama Canal and the government of the Canal Zone and, by Executive Order 8232 (September 5, 1939), the President has done so. Contracts made by the Canal Zone are therefore treated as contracts with the War Department. Reference to the Panama Canal Zone includes the Panama Canal.

332.9 **Panama Railroad Company Contracts.** Contracts made by the Panama Railroad Company, a New York corporation whose stock is owned by the United States, are not subject to renegotiation.

332.10 **Contracts Involving Named Departments and Departments or Agencies other than Named Departments.** In connection with centralized government procurement, certain of the named Departments and other governmental agencies execute contracts pursuant to which the articles contracted for may be delivered to and paid for by other departments or agencies. As a general rule, the renegotiability of such contracts depends upon whether the contract is with a named Department and not upon whether a named Department receives delivery of, or pays for, the articles purchased. The following situations are illustrative of the foregoing principle:

(1) The War Department purchases articles under contracts which state that the contract is for general utilization by all arms, services and bureaus, and that deliveries and payments will be made in accordance with instructions to be issued subsequently. The War Department then authorizes the other interested agencies or departments to issue instructions to certain designated contractors for a specified quantity of the articles, and notifies the contractor of such authorizations. The War Department retains the right to rescind or change the allocation made to the other agencies or departments. Such contracts are subject to renegotiation unless the War Department contract is clearly replaced by a contract with an agency other than a named Department.

(2) Food Distribution Administration manages centralized procurement of certain foods. Food Distribution Administration executes the contracts, allocates the available supply to other interested departments or agencies (including certain of the named Departments) and is reimbursed by such interested departments or agencies. Since Food Distribution Administration is not a named Department, such contracts are not subject to renegotiation.

333. General Interpretation of Subcontracts.

333.1 Statutory Definitions.

(1) Subsection (a) (5) and (6) of the 1943 Act provide:

"(5) The term 'subcontract' means

"(A) Any purchase order or agreement to perform all or any part of the work, or to make or furnish any article, required for the performance of any other contract or subcontract, but such term does not include any purchase order or agreement to furnish office supplies; or

"(B) Any contract or arrangement other than a contract or arrangement between two contracting parties, one of which parties is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party, (i) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or (ii) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts: *Provided,* That nothing in this sentence shall be construed (1) to affect in any way the validity or construction of provisions in any contract with a Department or any subcontract, heretofore at any time or hereafter made, prohibiting the payment of contingent fees or commissions; or (2) to restrict in any way the authority of the Secretary or the Board to determine the nature or amount of selling expenses under subcontracts as defined in this subparagraph, as a proper element of the contract price or as a reimbursable item of cost, under a contract with a Department or a subcontract.

"(6) The term 'article' includes any material, part, assembly, machinery, equipment, or other personal property".

333.2 **Interpretation of Definition.** By this definition of "subcontract", profits on the production and sale of articles required for the performance of another contract or subcontract are subject to renegotiation, as well as profits on the production or sale of all materials incorporated into the end product, down to and including raw materials, except certain specified raw materials and agricultural commodities exempted under subsection (i) of the 1943 Act. This definition is interpreted to include contracts not only with prime contractors but also with other subcontractors, if such contracts are—

(1) for the sale or processing of an end product or of an article incorporated therein,

(2) for the sale, furnishing or installation of machinery, equipment or materials used in the processing of an end product or of an article incorporated therein,

(3) for the sale, furnishing or installation of machinery used in the processing of other machinery to be used in the processing of an end product or of an article incorporated therein,

(4) for the sale, furnishing or installation of component parts of or subassemblies for machinery included in (3) above and machinery, equipment and materials included in (2) above, and

(5) for the performance of services directly required for the performance of contracts or subcontracts included in (1), (2), (3) and (4) above.

The term "component part" as used in this paragraph shall be deemed to include materials and ingredients.

333.3 When Machinery, Equipment or Materials "Used in Processing". Under this interpretation machinery, equipment or materials will be deemed to be used in the processing of an end product or an article incorporated in an end product in all cases where such machinery, equipment or materials are used:

(1) to produce or otherwise operate directly on an end product or an article incorporated in an end product by chemical, physical or mechanical methods; such, for example, as shaping, cutting, constructing, combining, refining, assembling, testing, inspecting or (in the case of end products) packaging. Examples of this category include not only such machinery as rolling mills and machine tools, but also gauges and other measuring instruments, torches and chemicals or other materials consumed in the course of the manufacturing process, such for example as hydrogen, oxygen, coke and acetylene;

(2) to transport within the contractor's plant an end product or an article incorporated in an end product or other articles used in connection with the production thereof. Examples of this category include tote boxes, tractors, trucks and traveling cranes;

(3) in connection with the repair, maintenance, equipping, or operation in the contractor's plant of machinery or equipment there used in the production of an end product, or an article incorporated in an end product. Examples of this category include spare parts, auxiliary tools, abrasives, wrenches, screwdrivers, other hand tools, lubricating oil, cutting oil and dry ice; also machine tools or equipment located in the tool room of a contractor's plant and special equipment used for the manufacture, preparation or maintenance of tools, dies, jigs, fixtures, equipment or machinery.

333.4 General Effect of Interpretation.

(1) In general it is intended to include as subject to statutory renegotiation the sale of all machinery, equipment, materials and other articles which contribute directly to the actual production of an end item or an article incorporated therein, in connection with the physical handling of the item from the time of entry of the component materials to departure of the item from the plant in question and to include all machinery which similarly contributed directly to the actual production of other machinery so used. Packaging materials and containers are regarded as a component part of the end product when they are used to package or contain the end product and are delivered with the end product to a Department; on the other hand, sales of packaging materials and containers which are not ultimately delivered to a Department are excluded from statutory renegotiation. (See paragraphs 333.3 (1), 344.5 and 347.2 (1) and (3).)

(2) It is intended to exclude the sale of articles which contribute only indirectly to the actual manufacturing process, such as products used for general plant maintenance, including fuel and equipment to produce light, heat and general power requirements and such as equipment needed for general office maintenance, including all types of office machinery and supplies, and such as safety equipment and clothing.

(3) It is not intended to exclude from renegotiation any articles sold to a contractor when the items are to be ultimately resold to a Department either as end products or as component parts included therein. However, subcontracts to furnish office supplies are specifically excluded from the definition of subcontract. Therefore, subcontracts for office supplies, although such office supplies are ultimately sold to a Department, are not subject to renegotiation. Office supplies are interpreted to include paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples and other items of consumable character, as well as related items of relatively short life and minor cost, such as pens, pen holders, pencils, blotter pads and calendars; they do not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, waste baskets, filing cases, typewriters and calculating, recording, reproducing and dictating machines.

333.5 **Allocation of Sales.** Sales of such machinery and equipment are allocated on the basis of the use thereof (i.e., for renegotiable or non-renegotiable production); and when the extent of the use can not be readily established, such sales are considered renegotiable in substantially the same proportion as the production of the purchasers of such machinery and equipment is subject to renegotiation. (See Section 2 of Chapter III, including paragraph 322.3.)

334. Specific Interpretations of "Subcontract".

334.1 **Standard Commercial Articles.** The term "standard commercial article" is defined by subsection (a) (7) of the 1943 Act which provides in subsection (i) that agreements for such articles may be exempted by the War Contracts Board under certain conditions. (See paragraph 354.) Unless agreements for standard commercial articles are exempted pursuant to such subsection, their renegotiability will be determined by the same tests applied to agreements for equipment specially fabricated for war uses or purposes.

334.2 **OPA Price Ceilings.** The fact that articles are sold under price ceilings fixed by the Office of Price Administration does not exclude the sale of such articles from renegotiation. Excessive profits have been realized within OPA price ceilings. The increase in volume of sales of such articles may lower costs to such extent that excessive profits are realized.

334.3 **Patent Licenses as Subcontracts.** Patent licenses for processes or inventions required in performing contracts with the Departments and subcontracts are subcontracts as defined in subsection (a) (5) (A) of the 1943 Act subject to statutory renegotiation (unless exempted), whether or not the licensor furnishes or agrees to furnish any technical or other service to the licensee and without regard to the time that the license agreement was made. Such patent licenses are not subcontracts under subsection (a) (5) (B) of the 1943 Act.

334.4 **Subcontracts for Office Supplies.** The definition of "subcontract" as contained in subsection (a) (5) (A) of the 1943 Act specifically excludes therefrom agreements or purchase orders for office supplies. (Also see paragraph 333.4.)

335. Contracts and Subcontracts Involving Real Property.

335.1 Contracts and Subcontracts for Existing Real Property.

(1) Action taken with respect to exempting contracts and subcontracts for certain interests in real property is referred to in paragraph 352.2.

(2) Moreover, aside from such exemption, the statutory definition of "subcontract" is construed to exclude agreements for the purchase of real property by contractors and subcontractors. Since it refers to the making or furnishing of any "article" which in turn is defined to mean any "material . . . or other personal property", the definition implies that agreements for the acquisition of real property are not subcontracts.

(3) The exemptions and exclusions discussed in this paragraph govern agreements for existing real property, but do not apply to agreements for fixtures or for improvements to or construction of real property which are discussed in the following paragraph.

335.2 Agreements for Fixtures, Construction and Improvements on Real Property.

(1) Where an agreement is for work or articles which become real property in the course of its performance, as distinguished from existing real property, the principles stated in this paragraph govern.

(2) Where an agreement to sell, furnish or install machinery, equipment, materials or other personal property would otherwise constitute a renegotiable contract or subcontract, the fact that such property is to be installed in a building or otherwise affixed to real estate and will be treated as real property for some purposes does not exclude the agreement from renegotiation.

(3) Where a contract for the construction of a building or improvements on or to real property is made by a Department, or if not made by a Department the Government acting through a Department is to obtain title to such building or improvements either immediately or ultimately (such as contracts for plant and facilities), then such contract is renegotiable unless exempted. Likewise all subcontracts under such a renegotiable contract for furnishing services, or articles, such as building materials and structural steel, which are personal property when furnished, but which became real property during the course of construction, are renegotiable unless exempted, and so are subcontracts for furnishing any machinery and equipment installed in the building.

(4) Where, however, an agreement is for the construction of a building or improvement on or to real property for a contractor or subcontractor for the purpose of performing a renegotiable contract or subcontract and the Government acting through a Department is not to acquire title to such building or improvements, either immediately or ultimately, then except as provided in (2) above, such agreement and subcontracts thereunder are not subject to renegotiation even though the improvements may be covered by Certificates of Necessity.

(5) In determining whether a subcontract for an item is renegotiable under subparagraph (2) or not renegotiable under subpara-

graph (4), it is helpful to consider its character at the time of installation. If the item is one which has a predominantly prefabricated character at the time of installation or assembly, it should be classified as machinery or equipment and the subcontract for its sale is therefore subject to renegotiation. A subcontract for an item is not considered subject to renegotiation if the item has no substantial existence as such until its construction from materials at the time of installation, i. e., where the principal component parts did not have a prior existence as machinery or equipment (in the ordinary sense) off the premises but result from construction on the premises.

(6) Attention is directed to the mandatory and discretionary exemption of contracts or subcontracts for the construction of buildings, structures, improvements or other similar facilities and the regulations relating thereto. (See paragraphs 346, 347, 355.3 and 356.)

336. Brokers, Manufacturers' Agents, and Dealers—Subcontracts.

(1) The definition of subcontract in subsection (a) (5) of the 1943 Act includes any contract or arrangement (a) which makes the compensation thereunder depend on procuring one or more contracts with a Department or subcontracts or on their amount, or (b) under which any part of the services performed or to be performed consists of the soliciting or attempting to procure or procuring one or more such contracts or subcontracts. This provision subjects such agreements to renegotiation under the 1943 Act to the same extent as other subcontracts. It does not, of course, validate any such agreement if otherwise illegal, or affect the allowance or disallowance of amounts paid under such contracts as items of cost.

(2) In addition, even when not within (1) above, contracts between manufacturers and their representatives are subject to renegotiation as subcontracts if the representative is performing, or agrees to make available on request, engineering, mechanical, or other services related to the performance of one or more prime contracts with the Departments or subcontracts, including assistance in obtaining priority certificates and in other matters required in connection with performance of the contract. For example, manufacturers' agents in the machine tool industry customarily hold themselves ready to furnish engineering advice, mechanical service, and advice on training in the use of tools. By contract or custom the manufacturer usually pays the commissions of the agent whether or not these services are used, and charges the amount into the cost of the tool. These activities comprise "part of the work ..... required for the performance of any other contract or subcontract" within the definition of subcontract in subsection (a) (5) (A) of the 1943 Act. (See paragraph 203.4.)

(3) When a manufacturer's representative also acts as dealer, he is in substantially the same position as a jobber and his sales of articles to one of the Departments or to a contractor with a Department or a subcontractor are subject to renegotiation, whether the articles are delivered from his own inventory or shipped direct by the manufacturer. The fact that the prices on articles handled by manufacturers' representatives and jobbers are regulated under Office of Price Administration ceilings does not affect the result. (See paragraph 334.2.)

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the amount of such excess inventory as computed at the beginning of the month, until new computations at the beginning of the succeeding month shall be made. It will not be necessary to calculate actual physical inventories and orders on hand at the beginning of each month; a cumulative calculation may be made by applying the purchases made and orders taken in each month to the position at the beginning thereof, until the date of the succeeding physical inventory. The Department may in its discretion allow a contractor or subcontractor to deviate in individual cases from the monthly basis described above, if available records are considered to be such that some other basis (daily, weekly, etc.) will more accurately bring out the facts in the case. Whatever basis is approved must be used consistently throughout the fiscal year.

(d) *Treatment of Excess Inventory.* Upon the establishment of the existence of the excess inventory, such inventory is deemed to be the inventory first used by the contractor or subcontractor thereafter, and shall be allocated pro-rata between contracts with the Departments and subcontracts taken during the month under which the amounts received or accrued are subject to renegotiation, and other contracts, to the extent that such contracts and subcontracts require the use of the material, up to the end of the month in which the excess inventory is exhausted.

(e) *Exclusion of Profits Attributable to Increment in Value of Excess Inventory.* In any case in which it appears that profits attributable to the increment in value of the excess inventory may exist, a tentative determination of excessive profits, will be made without regard to this provision. The tentative excessive profits, so determined, will then be reduced by the portion of the profits attributable to the increment in value of the excess inventory. For the purposes of determining the portion of the profits attributable to the increment in value of the excess inventory which is to be so excluded, replacement value shall be allowed only to that portion of the excess inventory allocated to each such contract or subcontract and the profits to be so excluded attributable to such contracts shall be limited to the portion of such profits received or accrued under such contract or subcontract during the fiscal year. If, for the fiscal year, profits derived from contracts with the Departments or subcontracts under which the amounts received or accrued are subject to renegotiation, attributable to increment in value of the excess inventory, exceed losses derived from such contracts or subcontracts attributable to decreases in value of the excess inventory, such excess of profits over losses will be excluded in determining excessive profits.

344.5 Packaging Materials and Containers. If there are delivered to a Department end products, contracts for which are exempted from renegotiation under subsections (i)(1)(B) or (C) of the 1943 Act relating to certain raw materials or agricultural commodities, the exemption of the end products extends to and includes the packages or containers in which the end products are delivered to the Department. (See paragraphs 333.3 (1), 333.4 (1) and 347.2 (1) and (3).)

345. Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions.

345.1 **Statutory Exemption.** Subsection (i) (1) (D) of the 1943 Act provides that it shall not apply to—

> "(D) any contract or subcontract with an organization exempt from taxation under section 101 (6) of the Internal Revenue Code."

345.2 **Internal Revenue Code.** Section 101 (6) of the Internal Revenue Code exempts from taxation:

> "(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

346. Construction Contracts Awarded as a Result of Competitive Bidding.

346.1 **Statutory Exemption.** Subsection (i) (1) (E) of the 1943 Act provides that it shall not apply to—

> "(E) any contract with a Department, awarded as a result of competitive bidding, for the construction of any building, structure, improvement, or facility".

346.2 **Interpretation and Application of Exemption.**

(1) This section of the 1943 Act is applicable only to amounts received or accrued for fiscal years ending after June 30, 1943 (regardless of the date when the contract was made) under any contract which meets all of the following conditions:

(a) The contract is a contract with a Department (i. e., is a prime contract). The exemption has no direct applicability to subcontracts—but see paragraphs 347 and 356.2 for the principles governing exemption of subcontracts under prime contracts as to which this exemption is applicable.

(b) The contract is for the construction of a building, structure, improvement or similar facility. A contract will be deemed to be for the construction of a building, structure, improvement or similar facility if the subject matter of the contract is the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility. The exemption has, however, no applicability to contracts for the furnishing of materials or supplies, as such, even if such materials or supplies are to be used in the construction of a building, structure, improvement or similar facility; nor has the exemption any applicability to contracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing.

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or similar facility from a contract for the furnishing of machinery or equipment as described in subdivision (1)(b) of this paragraph, regard is to be had to the subject matter of the contract. To the extent that the subject matter of the contract involves the furnishing or the furnishing and installation of machinery or equipment which has or may have use in processing, within the principles stated in paragraph 333.3, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or similar facility, but will be regarded as a contract for the furnishing of machinery or equipment, in accordance with the principles set forth in paragraphs 335.2(2) and 335.2(5) of these Regulations. In a case where the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility and the furnishing of machinery or equipment are embraced within a single contract, the undertaking for the construction or installation of the whole or any integral part of the building, structure, improvement or similar facility may be severed from the undertaking to furnish the machinery or equipment and an appropriate finding made as to that portion of the entire contract which may properly be deemed exempt.

(3) If a construction contract is exempt from renegotiation under the provisions of this paragraph 346.2, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or facilities to be performed at or adjacent to the site of the original project are considered a part of the original construction contract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract.

(4) Determination whether this exemption is applicable to any particular contract shall be made by the Department or Service conducting the renegotiation in which such contract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

347. Subcontracts Under Exempt Contracts and Subcontracts.

347.1 Statutory Exemption. Subsection (i) (1) (F) of the 1943 Act provides that it shall not apply to

> "(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph."

347.2 Interpretation and Application of Exemption.

(1) It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i)(4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c)(6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision. (See paragraph 348.5.)

(2) In any case involving the renegotiable status of a subcontract under a prime contract the exempt status of which (by reason of the possible application of paragraph 346.2) has not been determined, the procedure shall be as follows: The Department or Service conducting the renegotiation of such subcontract shall advise the Assignments and Statistics Branch of the identity of the prime contract, the exempt status of which is subject to question. The Assignments and Statistics Branch shall thereupon inform the Department or Service to which the prime contractor has been assigned for renegotiation and such Department or Service shall thereupon determine whether such prime contract is exempt under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination and the said Branch shall thereupon notify the Department or Service conducting the renegotiation of the subcontract. In the event that such prime contractor has not been, and will not be, assigned for renegotiation, or if previously assigned and such assignment has been cancelled, the Assignments and Statistics Branch shall so notify the Department or Service conducting the renegotiation of the subcontract and such Department or Service shall determine whether the prime contract would be entitled to exemption under the provisions of paragraph 346.2 and shall notify the Assignments and Statistics Branch of such determination.

(3) Subcontracts for the furnishing of packaging materials and containers in which there are delivered materials or products which are exempt from renegotiation under the provisions of subsections (i)(1)(B) or (C) of the 1943 Act relating to certain raw materials or agricultural commodities or which are otherwise exempt under paragraph (i)(1) of the 1943 Act (see paragraphs 333.3 (1), 333.4 (1), 344.5 and 347.2 (1)) constitute subcontracts under exempt prime contracts and are exempt from renegotiation under the provisions of subsection (i)(1)(F) of the 1943 Act.

348. Annual Receipts Under Statutory Minimum.

348.1 Statutory Provision. Subsection (c) (6) of the 1943 Act provides

> "(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and sub-

contracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 Computation of Aggregate Receipts and Accruals.

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (a) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348. For the purpose of applying this provision of the Act gross receipts and accruals will be computed without the elimination of inter-company sales.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 No Reduction by Refund Below Exemption.

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a) (5) (B) of the 1943 Act), no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a)(5)(B) of the 1943 Act, no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the refund may reduce the aggregate amount of gross receipts or accruals of any member below the floor specified in subdivision (1) or (2) of this paragraph but the aggregate of the recoveries from such contractors after adjustment for state income taxes must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. In the case of companies renegotiated on a consolidated basis the combined adjusted sales will be computed without the elimination of inter-company sales (see paragraph 348.2(2)).

(5) Except in those cases where prior to the commencement of renegotiation a contractor makes a retroactive price reduction or refund, applicable to the period which is the subject of renegotiation, in an amount at least equivalent to the maximum recovery permitted under the preceding provisions of this paragraph (so that if renegotiation proceedings were conducted there could be no recovery by reason of such limitation) the amount of excessive profits will be estimated by the renegotiating agency in the first instance without regard to the possible final effect of the above limitation on the amount of recovery.

(6) In applying the provisions of this paragraph 348.3 to any case in which an adjustment for state income taxes is required (see paragraph 389), excessive profits shall first be determined and the appropriate adjustment for state income taxes shall be made without regard to any limitations imposed by this paragraph upon the amount of refund. The limitations of this paragraph shall then be applied in determining the amount to be refunded.

348.4 **Tests of "Control".** In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual Control*: An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership Control*: A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture Control*: A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other Cases*: Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation.

348.5 Subcontracts Under Contracts Exempt Under the Statutory Minimum. Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 Act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 Act. (See paragraph 347.2.)

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contracts commonly known as "space charters" or the service rate in time charters, regardless of whether the vessel involved was requisitioned by the Government or any agency thereof.

(2) The words "when the contract price is established" in subsection (i) (4) (B) of the Renegotiation Act and in the preceding subdivision of this paragraph are a qualification upon the scope of the exemption, and contemplate that the contract or subcontract price shall be established at the time the contract or subcontract is entered into. Accordingly, this exemption extends only to contracts and subcontracts under which the price is a fixed or determinable amount at the time the contract or subcontract is entered into, and does not apply to any contract or subcontract under which the price, at the time the contract or subcontract is entered into, is contingent upon a subsequent event or is thereafter to be determined by reference to a variable element (as, for example, the lessee's sales or profits).

(3) For an exemption relating to certain contracts and subcontracts involving electric power, gas, transportation and communications and subcontracts thereunder, see paragraph 842. For an exemption relating to perishable foods, see paragraph 843.

353. When Contract Provisions Adequate to Prevent Excessive Profits.

353.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(C) any contract or subcontract or performance thereunder during a specified period or periods, if in the opinion of the Board, the provisions of the contract are otherwise adequate to prevent excessive profits."

353.2 Requests for Exemption. Requests for exemption of particular contracts and subcontracts should be directed to the procurement officials of the Department concerned, and not to the War Contracts Board.

354. Contracts and Subcontracts for Standard Commercial Articles.

354.1 Statutory Authority.

(1) Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

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"(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

"(7) The term 'standard commercial article' means an article—

"(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

"(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

"(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled 'An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes', or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every material respect with such article with which it is so compared."

(3) Subsection (i)(2) of the 1943 Act provides

"(2) The Board is authorized by regulation . . . to interpret and apply the definition contained in subsection (a) (7)."

354.2 Interpretation and Application.

(1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it

is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved.

(3) For exemptions under the standard commercial article exemption, see paragraph 845.

355. Contracts and Subcontracts When Effective Competition Is Likely to Exist.

355.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 **General Interpretation of Exemption.** The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 **Application of Exemption to Construction Contracts and Subcontracts.**

(1) The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist,

(a) The contract or subcontract is for the construction of a building, structure, improvement or similar facility. A contract or subcontract will be deemed to be for the construction of a building, structure, improvement or similar facility if the subject matter thereof is the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility. The exemption has, however, no applicability to contracts or subcontracts for the furnishing of materials or supplies, as such, even if such materials or supplies are to be used in the construction of a building, structure,

improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing;

(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3. Accordingly, the War Contracts Price Adjustment Board, in accordance with subsection (i)(4) of the Renegotiation Act, has exempted such contracts and subcontracts from all of the provisions of the Act.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular contract or subcontract shall be made by the Department or Service conducting the renegotiation in which such contract or subcontract is involved upon the basis of the principles referred to in the preceding subdivisions of this paragraph.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of sub-

contracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 **Exemption.** (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(3) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(3) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

356.3 **Cross reference.** For an exemption of subcontracts under certain public utility contracts, see paragraph 842.5.

357. **Delegation of Authority to Make Permissive Exemptions.** The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the

1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. **Requests for Exemption.** All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

[The next page is 361.]

(c) the Chairman of the Price Adjustment Board of the Department concerned, in his discretion, may authorize the conditional allowance and the use of a special clause, or may advise the renegotiating agency that the item should be unconditionally allowed or disallowed as a cost in renegotiation, or may instruct the renegotiating agency to treat the item in such other manner as the Chairman, in his discretion, may consider appropriate. Additional provisions may be prescribed for insertion in the renegotiation agreement to assure payment by the contractor of any amounts which may become due in the future by reason of the special clause, if, in the opinion of the Chairman, the financial condition of the contractor is such that the interests of the Government require the same.

(5) *Costs Previously Allowed in Renegotiation.* No item of cost shall be deemed "properly chargeable" against or "allocable" to renegotiable business to the extent that such item has, in a previous renegotiation, been charged against or allocated to renegotiable business in determining excessive profits, notwithstanding that such item may be a deduction or exclusion under Chapters 1 and 2E of the Internal Revenue Code in computing taxable net income for the taxable period corresponding to the fiscal period covered by the current renegotiation.

382. Salaries, Wages and Other Compensation.

382.1 Allocation. Salaries, wages and other compensation should be allocated between renegotiable and non-renegotiable business according to principles established in paragraph 381.4.

382.2 Allowances.

(1) Under Section 23 (a) of the Internal Revenue Code, salaries or other compensation for personal services are allowed to the extent found "reasonable". In determining whether any salaries or other compensation paid by a contractor to its officers or employees are unreasonable, consideration shall be given to the nature of the work, extent of responsibility, experience and effectiveness of the officer or employee, and increases in compensation since January 1, 1941. Comparison shall be made where possible with the compensation of officers or employees in similar positions in other companies within the particular industry. Reasonableness of compensation may be determined only within broad limits, and weight shall be given to the determination by the contractor of the worth to it of the services of an officer or employee.

(2) Whether or not the profit and loss statement of a partnership includes salaries or drawing accounts for partners as an expense, a so-called "salary allowance" may be made for *reasonable* salaries for such partners as are *active* in the business in determining the amount of excessive profits to be eliminated.

(3) Reasonable salaries paid to employees who are absent on military or naval service or who are serving the Government in other ways at a nominal compensation but who intend to return at the conclusion of the emergency will be allowed as a cost if such salaries are paid under some standard arrangement adopted by the contractor for

general application, and are properly allocated between renegotiable and non-renegotiable business.

382.3 **Wage and Salary Stabilization.**

(1) The renegotiating agency, in considering wages and salaries as costs, will observe the provisions of the Stabilization Act of 1942, approved October 2, 1942, as amended, and all Executive Orders and regulations issued pursuant to said Act.

(2) The Director of Economic Stabilization has issued regulations effective October 27, 1942 and amended regulations effective August 28, 1943.

(3) The Commissioner of Internal Revenue has issued regulations covering that portion of salary stabilization which is administered by the Commissioner.

(2) If the renegotiation is concluded before the contractor has filed his Federal income or income and excess profits tax returns for the fiscal period involved, the contractor will ordinarily exclude from income as reported in such returns the amount of profits to be eliminated. In such case no tax credit will be allowable and the agreement should, in lieu of the provisions of Article 3 of the standard form, contain the provisions set forth in paragraph 741.2(3)(a) of these Regulations.

(3) In some instances less than all of the profits to be eliminated may have been included in the income for the fiscal period upon which Federal income or income and excess profits taxes have been assessed. In such circumstance, a tax credit under Section 3806 of the Internal Revenue Code will be allowable only as against the part of the profits to be eliminated upon which such Federal taxes have been assessed. A clause covering this type of situation is set out in paragraph 741.2(3)(b) of these Regulations.

(4) If the renegotiation is concluded with a partnership, the form of tax credit clause should be appropriately modified. In paragraph 741.2 (3) (c) is a form of partnership tax credit clause which may be used when it is appropriate in view of the facts. Should less than all the partners sign the renegotiation agreement (see RR 502.12 (3) and (6)) such clause will have to be appropriately modified.

502.5 Article 4: Terms of Payment.

(1) The schedule of the payments to be made will be set forth in Article 4. A suggested form of such schedule is set forth in paragraph 741.2 (5) of these Regulations. The Department which has conducted the renegotiation will also provide, in this article, for the place of payment. In the event that the profits agreed in Article 1 to be eliminated are derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and Rubber Reserve Company, or any of such corporations, and the total amounts received or accrued under such prime contracts exceed $50,000, the payment provision, in accordance with the footnote to Article 4 on the standard form, will require payment of the excessive profits under such prime contracts to the RFC Price Adjustment Board. In cases in which the total amounts received or accrued under prime contracts with any of the above named subsidiaries of the RFC do not exceed $50,000, it shall not be necessary to make a separate determination of the profits derived from such contracts and the entire refund shall be payable as though no contracts with the RFC subsidiaries were involved.

(2) For the purpose of determining the portion of the profits which are to be eliminated which were derived from such prime contracts, the Department conducting renegotiation will segregate the amounts received or accrued under such contracts from amounts received or accrued under other renegotiable contracts and subcontracts involved in the renegotiation of a particular contractor. It will also generally segregate the profits derived from such prime contracts. Where, however, it is indicated that the margin of profit attributable to contracts with the RFC subsidiaries is substantially the same as that attributable to other contracts and subcontracts involved in the

renegotiation, a fair allocation of the profits to be eliminated may be effected by prorating the amount of the refund on the basis of the amount of renegotiable business attributable to contracts with the RFC subsidiaries and the amount of such business attributable to other contracts and subcontracts. Accordingly, the Department conducting renegotiation may determine the amount of the renegotiation refund to be paid to the RFC Price Adjustment Board on such basis where it is believed that the application of the same will result in a fair and reasonably accurate result.

(3) Responsibility for the collection of, and for the maintenance of records concerning, any amounts due the RFC Price Adjustment Board under renegotiation agreements, shall rest with the RFC Price Adjustment Board, and any such agreements providing for refunds to the RFC under the 1943 Act shall be referred to the RFC Price Adjustment Board for the collection of that portion of the refund payable to that Board. The Department conducting the renegotiation will retain responsibility for the collection of only that portion of the refund which is payable into the Treasury of the United States. In such cases, an authenticated copy of the renegotiation agreement and tax credit computation letter shall be forwarded to the RFC Price Adjustment Board. The Assignments and Statistics Branch should be promptly notified of any default in the collection of any installment due under such agreements and the enforcement of the obligations under the agreement properly coordinated under the supervision of the War Contracts Price Adjustment Board.

(4) In the case of suit for the collection of any amounts due under any renegotiation agreements in which the RFC is entitled to a portion of the refund, under ordinary circumstances the Assignments and Statistics Branch should assign such case for collection to the Department then having the predominant interest in the balance of the refund.

(5) If a portion of the refund is to be made to the RFC Price Adjustment Board, any such tax credit should be apportioned ratably between the portion of the refund payable to the RFC Price Adjustment Board and the portion payable to the Treasurer of the United States.

(6) Specially detailed terms for elimination of excessive profits may be set forth on an Exhibit C and incorporated by reference in Article 4 (see paragraph 505). If no subsidiaries are involved and there is, therefore, no Exhibit B referring to such subsidiaries, this exhibit setting forth the terms of payment should, of course, be designated "Exhibit B," instead of "Exhibit C."

(7) Limitations upon the period of time beyond which the schedule of payments must not extend are set forth in paragraph 422 of these Regulations.

(8) Provision is made in the standard form of renegotiation agreement for the payment of interest on defaulted installments. (See paragraph 741.1 subdivision (4) and paragraph 741.2(5).) The rate specified in the agreement is "the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest." (See paragraph 807.)

502.6 **Article 5: Article Requiring Elimination of Additional Excessive Profits.** The provision set forth in paragraph 741.1 of these Regulations is designed to protect the interest of the Government if by reason of reduction of certain costs shown as paid or incurred, in the financial data submitted by the contractor, the profits of the contractor for the period covered by the renegotiation from contracts or subcontracts subject to the Renegotiation Act of 1943 are increased. This article should be omitted if the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 and the renegotiation agreement contains the paragraph set forth in the footnote to Article 1 in the Standard Form of Agreement set forth in paragraph 741.1.

502.7 **Article 6: Covenant Against Contingent Fees.** This article contains the provisions required by Executive Order 9001 to be included in certain types of Government contracts.

[The next page is 515.]

(2) The power of each of the Secretaries to eliminate excessive profits by any of the methods or any combination of the methods referred to in subsection (c) (2) of the 1943 Act, including Clauses (A), (B), (C), (D) and (E) thereof, may be exercised by each Secretary in his discretion (or by such person or persons as may have authorization to act by delegation, subdelegation or otherwise) immediately upon the making of an agreement by or on behalf of the War Contracts Board, or the entry of an order which is, or which is deemed to be the determination of the War Contracts Board, or the entry of an order under subsection (e) by The Tax Court of the United States. Such power may be so exercised without further action by the War Contracts Board.

(3) The delegation dated February 26, 1944 by the War Contracts Board delegated all the authority referred to in this paragraph. (See paragraph 821.1.)

(4) A form which may be used to direct a contractor to withhold and a form which may be used to direct a contractor to pay over amounts withheld are found in paragraphs 748.1 and 748.2. (See also paragraphs 423 and 502.5 (4).)

626.2 No Delay in Elimination of Excessive Profits Determined by Order.

(1) Under a renegotiation agreement, provision is frequently made for the elimination of the excessive profits over a period of time by refunds in installments or by other provisions. But if excessive profits are determined by order, no provision will be contained in such order for deferment of the obligation thereby created or any part thereof. The collection of the amount called for by such an order will be effected in accordance with the general principles governing the enforcement and collection of obligations owing to the United States as supplemented by the special powers and procedures contained in the Renegotiation Act.

(2) The filing of a petition in The Tax Court of the United States for a redetermination does not operate to stay the execution of the order determining excessive profits (see subsection (e) (1) of the 1943 Act).

(3) Interest at the rate of 6% per annum accrues upon the amount determined as excessive profits to be eliminated less the tax credit, if any, from and after the date fixed in the demand for payment. (See paragraphs 746.3 and 747.2.)

626.3 Elimination of Excessive Profits Determined by the Tax Court. Any excessive profits determined by order of the Tax Court in proceedings for redetermination and which have not theretofore been eliminated will also be eliminated by appropriate action. (See paragraph 637.)

[The next page is 631.]

703.3 Form No. 103 (Suggestion for Reassignment).

To Be Submitted in Quadruplicate

To: Assignments and Statistics Branch
War Contracts Price Adjustment Board
Room 3D 573, The Pentagon
Washington, D. C.

Subject:

1. The above contractor has been assigned to this office for renegotiation of its 1943 fiscal year. Reassignment is suggested for the following reasons(s):

☐ Principal war product.....
☐ Substantial predominance of interest in contracts held by.....
☐

2. The above contractor (has) (has not) been consulted with respect to proposed reassignment and (has) (has not) indicated approval.

3. The file for the fiscal year under review is available at .....

PRICE ADJUSTMENT BOARD (SECTION)

1st Ind.

To: Price Adjustment Board (Section)

☐ The above contractor is hereby reassigned to .....
☐ It is deemed inappropriate to reassign the above contractor.

For the Director of the Renegotiation Division:

Chief, Assignments and Statistics Branch

24-64951

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704. Forms for Cancellation of Assignment.

704.1 Statement by Contractor of Non-Applicability.

STATEMENT BY CONTRACTOR

Non-Applicability of the Renegotiation Act of 1943

To the War Contracts Price Adjustment Board:

We acknowledge receipt of a copy of the pamphlet entitled "Renegotiation" containing the text of the Renegotiation Act of 1943 and have noted particularly the provisions of subsections (a) (5), (c) (5) (A) and (c) (6) of that Act.

We certify that the aggregate receipts or accruals of the undersigned and of all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts with the War Department, Navy Department, Treasury Department, Maritime Commission, War Shipping Administration, Defense Plant Corporation, Defense Supplies Corporation, Metals Reserve Company and Rubber Reserve Company and under subcontracts as defined in the Act, *including* those which are exempted under subsection (i) of the Act or which expressly provide that they are not subject to renegotiation pursuant to the authority granted by said subsection (i) (but not including commissions and other income within the meaning of subsection (a) (5) (B) of the Act), did not exceed $500,000 for the fiscal year ended ..... 194....; and we further certify that commissions and other income within the meaning of subsection (a) (5) (B) of the Renegotiation Act of 1943 received or accrued by the undersigned and by all persons, firms or corporations under the control of or controlling or under common control with the undersigned under contracts and subcontracts above referred to did not exceed $25,000 for the same fiscal year.

In making this certification recognition is given to the fact that in order to qualify for exemption it is necessary that both of the above conditions should be met; i. e., that the total of receipts or accruals under contracts with the above-named Departments or agencies and subcontracts as defined in the Act (excluding commissions and other income below mentioned) does not exceed $500,000 *and*

that the total of commissions and other income within the meaning of subsection (a) (5) (B) of the Act does not exceed $25,000. Accordingly, we do not intend to file a financial statement in conformity with the provisions of the first sentence of subsection (c) (5) (A) of the Act. If we have been assigned for statutory renegotiation, we request that such assignment be cancelled.

Very truly yours,

.....
Name of Contractor

By.....
(Principal officer, partner or proprietor)

.....
Title of officer

.....
Address of Contractor

Dated ..... 194....

In preparing this form, there will be printed on reverse side, subsections (c) (5) (A), (c) (6) and (a) (5) of the 1943 Act.

704.2 Notice to Contractor of Cancellation of Assignment.

NOTICE TO CONTRACTOR OF CANCELLATION OF ASSIGNMENT

Date .....

Contractor's Name
Address

Dear Sir:

Upon review of the information submitted by you in connection with renegotiation under the Renegotiation Act, as amended, this office recommended to the War Contracts Price Adjustment Board that your assignment to this office for renegotiation be cancelled for your fiscal year ending .....

This office is advised that such assignment has been cancelled in accordance with its recommendation.

While such cancellation does not operate as a release of liability under the Renegotiation Statute, nevertheless, in the absence of further developments no further action is contemplated.

Very truly yours,

(*Name of Renegotiating Department or Service*)

704.3 Request by Renegotiating Agency for Cancellation.

See paragraph 206.2

Section 4

FORMS RELATING TO AGREEMENTS AND UNILATERAL DETERMINATIONS

741. Agreement Forms.

741.1 Standard Form of Agreement.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

RENEGOTIATION AGREEMENT

This agreement is entered into as of the ..... day of ....., 194.., by and between the UNITED STATES OF AMERICA (hereinafter referred to as "the Government") and .....
.....,
* a corporation organized and existing under the laws of the state of .....,
* co-partners, doing business under the firm name of .....,
* a sole proprietor, doing business under the name of .....,
having its principal office at .....
..... (hereinafter referred to as "the Contractor").

1. *Profits to be Eliminated.* As a result of renegotiation pursuant to the Renegotiation Act, the Government and the Contractor hereby determine and agree that ..... Dollars ($.....) of the profits derived by the Contractor from contracts and subcontracts of the Contractor which are subject to renegotiation under the Renegotiation Act (hereinafter referred to as "said contracts and subcontracts") represent the amount of profits received or accrued under said contracts and subcontracts during the Contractor's fiscal year ended ....., 194.., (hereinafter referred to as "said fiscal year") which pursuant to the Renegotiation Act should be eliminated.†

2. *Warranty.* This agreement has been entered into in reliance, among other things, upon the representations of the Contractor, including the financial and other data submitted by the Contractor upon the basis of which the statement set forth in Exhibit "A" annexed hereto and made a part hereof was prepared.

The Contractor warrants that the representations made by it to the Government in connection with this renegotiation are true and correct to the best knowledge, information and belief of the Contractor and that to its best knowledge, information and belief, the Contractor has disclosed all material facts required to make the Contractor's representations complete and not misleading.

3. *Tax Credit Under Section 3806 of the Internal Revenue Code.* The Contractor represents that the profits, the amount of which is agreed in Article 1 hereof to be eliminated, were included in income in the Contractor's Federal income and excess profits tax returns for said fiscal year and that the Contractor has applied or will promptly apply for a computation by the Bureau of Internal Revenue, based upon the assessments made to the date of such computation, of the amount by which the taxes of the Contractor for said fiscal year payable under Chapters 1, 2A, 2B, 2D, and 2E of the Internal Revenue Code are decreased by reason of the application of Section 3806 of the Internal Revenue Code. The amount, if any, so computed will be allowed as a credit against the amount of profits agreed in Article 1 to be eliminated.

4. *Terms of Payment.* The Contractor agrees to pay to the Government the sum of ..... Dollars ($.....), being the amount determined in Article 1 hereof to be eliminated, as follows:

---

* Delete inapplicable language.

† If the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 of the Renegotiation Regulations, the following sentence will be added:

"The amount of profits to be eliminated hereby has been determined by taking into consideration the application of the $500,000 or the $25,000 limitation set forth in subsection (c) (6) of the Renegotiation Act as interpreted by paragraph 348.3 of the Renegotiation Regulations."

Payment shall be made by check to the order of the Treasurer of the United States and forwarded .....** All unpaid installments hereunder may at the option of the Government be declared and thereupon shall become immediately due and payable, in the event of a default continuing for twenty days in the payment of any amount required to be paid under this agreement. Interest at the rate provided by law in the District of Columbia as the rate which is applicable in the absence of express contract as to the rate of interest, shall accrue and shall be payable upon each payment due under this agreement from and after the due date thereof, whether original or accelerated.

5. *Additional Profits to be Eliminated* ***. If, as a result of the elimination of the amount of profits determined pursuant to Article 1 hereof, the Contractor shall either receive a refund (whether by repayment or credit) or shall recognize a reduction in its liability (by giving effect thereto on its books) in respect of any item which was allowed as an item of cost in the determination of such profits, then promptly thereafter, the Contractor shall pay to the Government, as additional profits which should be eliminated a sum equal to the amount of such refund or reduction in liability, by the delivery to ..... of a check payable to the order of the Treasurer of the United States in such amount.

In the elimination of said additional profits the Contractor shall be allowed the tax credit, if any, provided by Section 3806 of the Internal Revenue Code.

6. *Covenant Against Contingent Fees.* The Contractor warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul this agreement.

7. *Officials Not To Benefit.* No member of or delegate to Congress or resident commissioner or any other person in the employ or service of the United States shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. *Discharge of Liability.* This agreement shall be final and conclusive according to its terms, and performance by the Contractor in accordance herewith shall be in full discharge of all liability of the Contractor under the Renegotiation Act for excessive profits received or accrued under said contracts and subcontracts for the fiscal year covered hereby and, except upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, this agreement shall not for the purposes of the Renegotiation Act be reopened as to the matters agreed upon, and shall not be modified by any officer, employee, or agent of the United States, and this agreement and any determination made in accordance herewith shall not be annulled, modified, set aside, or disregarded in any suit, action or proceeding.

9. *Renegotiation Rebate.* Nothing contained in this agreement shall prejudice any right which the Contractor may have to recover a renegotiation rebate pursuant to subsection (a)(4)(D) of the Renegotiation Act.

10. *Execution of Agreement.* This agreement has been duly executed by or on behalf of the Contractor pursuant to proper authority and by or on behalf of the Government by the War Contracts Price Adjustment Board by its duly authorized representative to whom authority to execute this agreement has been delegated by the War Contracts Price Adjustment Board pursuant to subsection (d)(4) of the Renegotiation Act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in ..... counterparts as of the day and year above written.

(Corporate Seal if a Corporation)

By .....
(Title of Officer)

** In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, payment of the excessive profits under such prime contracts to the Reconstruction Finance Corporation Price Adjustment Board is required. If such situation exists, insert here—"to the extent of $ ....., less the prorata portion of the tax credit, if any, applicable thereto, and by check to the order of and forwarded to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C., to the extent of $ ..... , less the prorata portion of the tax credit, if any, applicable thereto." (See paragraphs 323 and 5025.)

*** When the amount of excessive profits to be refunded is limited by the provisions of paragraph 348.3 and the renegotiation agreement contains the paragraph set forth in the footnote to Article 1, Article 5 should be omitted.

742. Clearance Notice.

Form .....

WAR CONTRACTS PRICE ADJUSTMENT BOARD

.....
(Department)

Clearance

....., 194.....

To:

As a result of renegotiation pursuant to the Renegotiation Act, between the United States of America (hereinafter referred to as "the Government") and

.....
(If not a corporation, insert proper description)

.....

.....

corporation having its principal office at ..... in the City of ....., State of ..... (hereinafter referred to as "the Contractor"), it has been determined that no excessive profits have been received by or accrued to the Contractor during the Contractor's fiscal year ended ..... (hereinafter referred to as "said fiscal year"), from contracts and subcontracts of the Contractor which are subject to renegotiation pursuant to the Renegotiation Act and which were included as renegotiable business in the financial and other data upon which this determination is based (hereinafter referred to as "said contracts and subcontracts").

The determination and discharge herein are based upon data submitted by the Contractor including a statement of income and other financial data for said fiscal year.

This instrument shall constitute a final determination that no excessive profits have been received by or accrued to the Contractor during said fiscal year from said contracts and subcontracts and shall finally discharge the Contractor of any liability under the Renegotiation Act for excessive profits derived during said fiscal year from said contracts and subcontracts, subject, however, to the right of the Government, or its duly authorized representative, to reopen this renegotiation and modify or annul the determination and discharge herein upon a showing of fraud or malfeasance or a willful misrepresentation of a material fact, including a willful omission by the Contractor to state a material fact required to make any representation of the Contractor not misleading.

This determination and discharge shall not be effective with respect to any amounts heretofore or hereafter received by the Contractor under any of the contracts or subcontracts of the Contractor which are subject to renegotiation unless such amounts were reflected in income for said fiscal year in the financial data submitted by the Contractor and upon which the determination and discharge herein are based.

This determination and discharge are made upon the conditions that (a) no member of or delegate to Congress or resident commissioner, or any other person in the employ or service of the United States, shall be admitted to any share or part of this instrument or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this instrument if made with a corporation for its general benefit, and (b) the Contractor has not employed any person to solicit or secure this instrument upon any agreement for a commission, percentage, brokerage or contingent fee; and (c) the Contractor will notify the War Contracts Price Adjustment Board promptly of the receipt of any amounts paid to the Contractor under any of the contracts or subcontracts referred to above, which amounts are applicable to said fiscal year and which were not reflected in income

for said fiscal year in the financial data submitted by the Contractor. Breach of any of the foregoing conditions will give the Government the right to annul this determination.

*

UNITED STATES OF AMERICA

By .....
(Title)

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

---

* If subsidiaries of the contractor with like fiscal years are to be included in the clearance notice, add the following sentence:

"This instrument also applies to the ..... subsidiaries of
(insert number)
Contractor listed on the reverse hereof, as if each were named as Contractor in a separate instrument of like tenor."

Then list the names of the subsidiaries on the reverse side of the clearance notice. If space permits, it is preferable to list them in the inserted paragraph on the face and vary the insertion appropriately. Should corporations with like fiscal years which are affiliated with the Contractor be included in the clearance notice, the suggested insertion should be varied accordingly.

743—745. Reserved.

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746. Unilateral Determination—Delegated Authority.

746.1 Order Under Delegated Authority Determining Excessive Profits.

ORDER UNDER DELEGATED AUTHORITY DETERMINING EXCESSIVE PROFITS

Pursuant to authority duly delegated by the War Contracts Price Adjustment Board, a renegotiation proceeding was duly commenced with .... (hereinafter called the "Contractor") with respect to the aggregate of the amounts received or accrued by the Contractor under contracts with the Departments and subcontracts as defined in the Renegotiation Act (such contracts and subcontracts being hereinafter collectively referred to as "said contracts with the Departments and subcontracts") for the Contractor's fiscal year ended ..... (hereinafter called "said fiscal year").

In connection with such renegotiation proceeding, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal year. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act.

In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act.

As a result of such renegotiation it is hereby determined that ..... Dollars ($.....) represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year, which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, it is hereby determined that the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is ..... Dollars ($.....).

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d)(5) of the Renegotiation Act. If, and as soon as, this order shall be deemed the determination of the War Contracts Price Adjustment Board, pursuant to subsection (d)(5) of the Renegotiation Act, then ..... (or such
(Secretary of a Department)
official or officials in such Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and Entered on

..... 194.

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.2 Notice of Order Under Delegated Authority Determining Excessive Profits.

NOTICE OF ORDER UNDER DELEGATED AUTHORITY
DETERMINING EXCESSIVE PROFITS

..... 194...

Gentlemen:

You are hereby notified by registered mail that pursuant to renegotiation under the Renegotiation Act, and in accordance with authority delegated by the War Contracts Price Adjustment Board, ... acting in its behalf, issued and entered an order on ..... 1944, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended .....,
..... Dollars ($.....) represents excessive profits which should be eliminated. A copy of such order is enclosed herewith.

As provided in the Renegotiation Act such order may, in the discretion of the War Contracts Price Adjustment Board, be reviewed by such Board upon your request or upon its own motion, but unless such review shall have been initiated within the time prescribed by the Renegotiation Act, such order shall be deemed the determination of the War Contracts Price Adjustment Board.

Yours very truly,

.....
Title

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d)(4) of the Renegotiation Act.

746.3 Notice of Order Having Become the Determination of the War Contracts Price Adjustment Board.

NOTICE OF ORDER HAVING BECOME THE DETERMINATION OF THE WAR CONTRACTS PRICE ADJUSTMENT BOARD

..... 194..

Gentlemen:

You are hereby notified that no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on ..... 194.., pursuant to renegotiation under the Renegotiation Act, by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on .....

Demand is hereby made for the payment of the amount of such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Interest will accrue at the rate of 6% per annum from and after .... (here insert date approximately fifteen days from the date such order is deemed the determination of the War Contracts Price Adjustment Board) on any amount due under such order and unpaid.

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

**.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C. (See paragraphs 323 and 502.5.)

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

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747. Action by the War Contracts Price Adjustment Board After Review.

747.1 Order.

ORDER BY THE WAR CONTRACTS PRICE ADJUSTMENT BOARD AFTER REVIEW

..... 194..

Upon review of an order issued and entered ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining

..... Dollars ($.....) as the amount of excessive profits which should be eliminated, derived by .... (hereinafter called the "Contractor") from contracts with the Departments and subcontracts as defined in the Renegotiation Act, for the Contractor's fiscal year ended ....., and after taking into consideration all of the factors referred to in subsection (a)(4)(A) of the Renegotiation Act, the War Contracts Price Adjustment Board has determined that ..... Dollars ($.....) represents the portion of the Contractor's profits derived from said contracts with the Departments and subcontracts for the Contractor's fiscal year ended ....., which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the profits of the Contractor derived from said contracts with the Departments and subcontracts for said fiscal year which is not excessive, the War Contracts Price Adjustment Board hereby determines that the amount of excessive profits of the Contractor for said fiscal year which should be eliminated is ..... Dollars ($.....).

This order constitutes a determination by the War Contracts Price Adjustment Board upon review as provided by subsection (d)(5) of the Renegotiation Act. The ..... (or such official or officials in such
Secretary of a Department

Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as is provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Contractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code.

Dated,

Issued and entered on

..... 194..

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

747.2 Notice.

NOTICE OF DETERMINATION BY ORDER ENTERED BY WAR CONTRACTS PRICE ADJUSTMENT BOARD UPON REVIEW

..... 194.

Gentlemen:

You are hereby notified that upon review of an order dated, issued and entered on ..... 194.., by ..... acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has issued and entered its order determining that of your profits derived from contracts with the Departments and subcontracts for your fiscal year ended ....., ... Dollars ($.....) represents excessive profits which should be eliminated.

A copy of such order is enclosed herewith.

This notice is being mailed to you by registered mail on ....

Demand is hereby made for the payment of the amount of such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to .....*†

Interest will accrue at the rate of 6% per annum from and after .... (here insert date approximately fifteen days from the date of such order) on any amount due under such order and unpaid.

Yours very truly,

WAR CONTRACTS PRICE ADJUSTMENT BOARD

by .....

**.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50.000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C. (See paragraphs 323 and 502.5.)

† Insert address within Department to which the Contractor is assigned for renegotiation.

** Countersignature on behalf of the Secretary of a Department to which the Contractor is assigned for renegotiation.

---

748. Withholding Orders.

748.1 Direction to a Contractor to Withhold.

..... 194..

Gentlemen:

Pursuant to renegotiation under the Renegotiation Act, the War Contracts Price Adjustment Board has determined that $..... of the profits derived by ..... from contracts with the Departments and subcontracts for the fiscal year ended ..... are excessive profits which should be eliminated.

In accordance with the Renegotiation Act, the War Contracts Price Adjustment Board has authorized and directed the undersigned to eliminate such excessive profits. Accordingly, you are hereby directed to withhold for the account of the United States, pursuant to subsection (c)(2) of the Renegotiation Act, any and all amounts not in excess of $..... otherwise due or which shall become due from you to said .....

This direction shall be effective immediately and shall continue in effect until further notice from the undersigned.

You are directed further to report in writing to the undersigned within fifteen days from the date hereof the amount, if any, withheld by you for the account of the United States pursuant hereto.

Yours very truly,

.....

Title

Acting on behalf of the

.....

(Secretary of a Department)

748.2 Direction to a Contractor to Pay Over Amounts Withheld.

..... 194..

Gentlemen:

Pursuant to direction issued under subsection (c)(2) of the Renegotiation Act you have, as you have reported to the undersigned, withheld for the account of the United States from amounts otherwise due to ....., the sum of $.....

You are hereby authorized and directed to pay over said sum to the United States by delivery to the undersigned of a check in said amount, payable to the order of the Treasurer of the United States.*

As provided in said subsection (c)(2) of the Renegotiation Act you are indemnified by the United States against all claims by said .... on account of such amount withheld.

Yours very truly,

.....
Title

Acting on behalf of the

.....
(Secretary of a Department)

* In the event that the profits to be eliminated were derived in part from prime contracts with Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation or Rubber Reserve Company and the total amounts received or accrued under such prime contracts exceeded $50,000, appropriate provision should be made so that the portion of the profits eliminated allocable to such prime contracts is paid by check payable and delivered to the Reconstruction Finance Corporation Price Adjustment Board, 811 Vermont Avenue, Washington 25, D. C. (See paragraphs 323 and 502.5.)

[The next page is 771.]

Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Brig. Gen. Albert J. Browning, Chairman
(War Department)
Room 5D675, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3119

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Mr. Kenneth F. Clark
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5, D. C.

Tel. Executive 3340
Ext. 1047

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C. Tel. Republic 7500
Ext. 71783

791.3 Office of General Counsel.

War Contracts Price Adjustment Board
Attention: Mr. Frederick W. R. Pride, General Counsel
Room 112, Premier Building
718 18th Street, N. W.
Washington 25, D. C. Tel. Republic 7400
Ext. 62022 or 2029

791.4 Assignment Office.

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C. Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C. Tel. Republic 6700
Ext. 73678

791.5 Pentagon Office.

Room 3E 592, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73636

792. Departmental Price Adjustment Boards.

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 25, D. C. Tel. Republic 7400
Ext. 5169 or 62729

Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400
Ext. 61468

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 25, D. C.
Tel. Republic 7400.
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
21st Floor
100 West Monroe Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(2) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 53851.

(3) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 803-811, U. S. Custom House
610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 3860

(4) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Tucker 1351

794.3 Price Revision Division.

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. Related Offices.

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. War Department Patent Royalty Adjustment Offices.

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Any other perishable food of a similar nature which may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Vegetable seeds	Not processed beyond the form or state at which they may be used as seeds
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap; non-ferrous metal scrap; woolen waste, including woolen rags and clips, new and old; scrap rubber; waste paper; cotton or linen rags, including old bagging and old rope; and textile waste; sold by dealers or brokers.

Comment: The exemption of these articles as standard commercial articles applies only to dealers and brokers in these articles and is not to be construed as affecting, in any way, users of these articles (in particular, manufacturers who use these articles), nor does it affect manufacturers who may produce and sell these articles as a by-product in the course of their operation. Neither does the exemption cover sales of these articles in any form other than as scrap or waste.)

(b) Refined sugar (cane or beet);

(c) Textile bags (made of burlap or cotton);

(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.

(e) Paper of the following types and grades, sold by paper mills: Groundwood and free sheet uncoated and coated book papers (including but not limited to free sheet and groundwood offset, envelope and tablet papers); Mimeograph and duplicating (both groundwood and free sheet); Bond, writing and ledger, including opaque circular; Manifold and onion skin; Cover and text; Index and Bristol; Map paper; Post card paper; Blue print base stock.

(f) Paper and paper products sold by merchants.

(Comment: This exemption does not apply to sales of paper or paper products which have been manufactured, converted or processed by the seller or by any person under the control of or controlling or under common control with the seller.)

(g) Ready mixed concrete.

(h) Portland cement.

(i) Wheat flour.

(Comment: This exemption applies only to sales by the person milling the flour. Wheat flour includes granular flour and farina; whole wheat flour; products of the milling of durum wheat including whole durum flour and semolina; and blends of the foregoing. Bleached, bromated, enriched, phosphated and self-rising wheat flour are considered flour for purposes of this exemption.)

SUPPLEMENT RR-6

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS

for fiscal years ending after June 30, 1943

4 November 1944

SUMMARY OF IMPORTANT AMENDMENTS

The amendments made by this revision are summarized below. The principal changes are:

1. **Report of Recoveries Effected by Statutory Renegotiation.** Subparagraph (3) is added to paragraph 254 requiring Departmental Boards to submit every fourth Friday a report of recoveries effected by statutory renegotiation. A Form of Report and instructions thereto are set forth at paragraphs 751.9 and 751.10, respectively.

2. **Determination of Exempt or Non-Exempt Status of Construction Contracts and Subcontracts.** Subparagraph (4) of paragraph 346.2 is amended to provide that the exemption status of construction contracts shall be determined by the Department or Service conducting the renegotiation and that a central file with respect to such determinations shall be kept by the renegotiating agency. Subparagraph (2) of paragraph 347.2 and subparagraph (4) of paragraph 355.3 are amended to set forth the procedure to be followed in determining the exempt or non-exempt status of construction subcontracts under the mandatory and discretionary exemptions, respectively.

3. **Raw Material Exemptions.** Bentonite, dried, crushed, granulated and pulverized; Dolomite, crushed dolomite; and Tungstic Acid are added to the list of Raw Material Exemptions appearing at paragraph 841.

4. **Public Utilities—Furnishing of Water or Removal of Sewage.** Paragraphs 842.5 and 842.6 are renumbered 842.6 and 842.7, respectively, and a new paragraph 842.5 is added providing for the exemption of certain contracts for the furnishing of water and the removal of sewage.

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revision 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8
Tuesday, August 15, 1944 9 Federal Register 9907	Changes and additions in Renegotiation Regulations contained in Revision 9
Tuesday, September 26, 1944 9 Federal Register 11764	Changes and additions in Renegotiation Regulations contained in Revision 10
Thursday, October 26, 1944 9 Federal Register 12845	Changes and additions in Renegotiation Regulations contained in Revision 11

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

OVER→

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included immediately in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
251—252	251—252	Subparagraph 3 is added to paragraph 254 requiring Departmental Boards to submit every fourth Friday a report of recoveries effected by statutory renegotiation.
345—346	345—346	In the 12th line of subparagraph 2 of paragraph 344.3 the words "Department conducting the renegotiation" are substituted for the word "Board."
347D—349	347D—349	(1) Subparagraph 4 of paragraph 346.2 is amended to provide that the exemption status of construction contracts shall be determined by the Department or Service conducting the renegotiation and that a central file with respect to such determinations shall be kept by the renegotiating agency. (2) Subparagraph 2 of paragraph 347.2 is amended to provide a specific procedure to be followed in determining under subsection (i) (1) (F) the exempt or non-exempt status of construction contracts.
355—357	355—357	(1) Subparagraph 4 of paragraph 355.3 is amended to provide a specific procedure to be followed in determining under subsection (i) (4) (E) the exempt or non-exempt status of construction contracts. (2) At paragraph 356.3 the cross reference to paragraph 842.5 is changed to read 842.6.
703	703—704	Changes in Table of Contents for Chapter VII.
739—742 (inclusive)	739—742 (inclusive)	(1) The "Identification, Tabulation Form" (Form No. SPRAE-8) appearing at paragraph 705.8 is amended. (2) The "Instructions for Preparation of Identification, Tabulation Form" (SPRAE-8) appearing at paragraph 705.9 are amended.
777D—780	777D—780	(1) Paragraph 751.9 is added setting forth a form of "Report of Recoveries Effected by Statutory Renegotiation" (Form No. WCPAB-4). (2) Paragraph 751.10 is inserted setting forth the "Instructions for Preparation of Departmental Report of Recoveries Effected by Statutory Renegotiation (Form WCPAB-4)."
791—795A	791—795A	(1) In paragraph 791.3 Room 112 is changed to Room 126. (2) In paragraph 791.5 Room 3E 592 is changed to Room 3D 573.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
		(3) In paragraph 792 Commander A. G. Rydstrom is changed to Mr. A. G. Rydstrom. (4) At paragraph 793.1 in the address of the AAF Price Adjustment Branch "M. & S." is substituted for "M. M. & D." (5) At paragraph 793.1 in the address of the Chief of Chemical Warfare, Major Robert M. Estes is changed to Lt. Col. Robert M. Estes. (6) At paragraph 793.1 in the address of the Chief of Ordnance, Major John M. Marble is changed to Lt. Col. John M. Marble and "Price Adjustment Branch" is substituted for "Purchase Policy Section". (7) At subparagraph (3) of paragraph 793.2 in the address of the Pittsburgh Ordnance District, Pittsburgh 9 is changed to Pittsburgh 19. (8) At subparagraph (3) of paragraph 793.2 in the address of the Rochester Ordnance District, 1238 Mercantile Building is changed to 1242 Mercantile Building.
801—802	801—802	Changes in Table of Contents for Chapter VIII.
845—846	845—846	The following items are added to the list of Raw Material Exemptions appearing at paragraph 841: Bentonite, dried, crushed, granulated and pulverized; Dolomite, crushed dolomite; Tungstic Acid.
847B—848	847B—847D	Paragraphs 842.5 and 842.6 are renumbered 842.6 and 842.7, respectively and a new paragraph 842.5 is added providing for the exemption of certain contracts and subcontracts for the furnishing of water and the removal of sewage.

★When you have filed these pages, place this instruction letter in the back of your binder.

Section 5

COMPLETION OF RENEGOTIATION

250. Scope of Section. This section refers to the steps taken upon the completion of a renegotiation resulting in a voluntary agreement, to the administration of agreements and unilateral determinations, and to progress reports.

251. Preparation of Agreement. When a tentative settlement has been agreed upon, the Department conducting the renegotiation will promptly prepare a form of agreement (see Section 1 of Chapter V).

252. Preparation of Statement to Contractor. Section 2 of Chapter V deals with the furnishing of a statement to the contractor.

253. Administration of Agreements. Administration of voluntary agreements or of unilateral determinations by the Department to which the contractor was assigned for renegotiation is referred to in paragraph 509.

254. Progress Reports.

(1) The organization designated as the Assignments and Statistics Branch of the War Department Price Adjustment Board will be regarded by the War Contracts Board as the official source of information as to the Government's over-all progress of renegotiation. This Branch will in effect actually serve the War Contracts Board although constituted in the Renegotiation Division, Army Service Forces.

(2) The several Departmental Boards and Services will prepare and furnish to the Assignments and Statistics Branch as at the close of business each Friday the appropriate Weekly Progress Report (Form SPRA-O in the case of Departments, see paragraphs 751.1 and 751.2, and Form SPRA I in the case of Services, see paragraphs 751.3 and 751.4). On the basis of the information supplied in the Weekly Progress Reports of the several Departments, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Re ports (Form SPRA I-BB) and Operations Reports (Form SPRA I-CC) and will furnish the same to the War Contracts Board and the Departmental Boards (see paragraphs 751.6 and 751.8). On the basis of the information supplied in the Weekly Progress Reports of the Services, the Assignments and Statistics Branch will prepare bi-weekly Status of Renegotiation Reports (Form SPRA I-B, set forth in paragraph 751.5) and Operations Reports (Form SPRA I-C, set forth in paragraph 751.7).

(3) The several Departmental Boards will prepare and furnish to the Assignments and Statistics Branch a Departmental Report of Recoveries Effected by Statutory Renegotiation (Form WCPAB-4, see paragraph 751.9) signed by a member of the Departmental Board submitting the Report. Such Report will be furnished at the times required in the relevant instructions (see paragraph 751.10).

255. Control of Documents.

(1) Renegotiation Agreements, Reports of Renegotiation, records, files, correspondence, memoranda and all other documents

containing financial and business information pertaining to renegotiation with specific contractors are the property of the Government of the United States.

(2) Such documents are not to be distributed, nor their contents revealed, to any person having no legitimate right thereto.

(3) Upon transfer or separation from employment in renegotiation, or any other employment in which possession or custody of such documents is authorized, all personnel will return such documents to a responsible official.

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refines, or treats such a product to and beyond the first form or state suitable for industrial use, or who produces or acquires an agricultural product and processes, refines, or treats such a product to and beyond the first form or state in which it is customarily sold or in which it has an established market, the Board shall prescribe such regulations as may be necessary to give such contractor or subcontractor a cost allowance substantially equivalent to the amount which would have been realized by such contractor or subcontractor if he had sold such product at such first form or state."

(2) *Interpretation and Application.* Where a contractor (a) processes, refines, or treats a product of a mine, oil or gas well, or other mineral or natural deposit, or timber, to the first form or state suitable for industrial use, and further refines, processes or treats such product beyond the first form or state suitable for industrial use in order to perform his contract, or (b) produces or acquires an agricultural product and processes, refines or treats such agricultural product to and beyond the first form or state in which it is customarily sold or in which it has an established market, then in such cases for the purposes of statutory renegotiation the product will be treated as an item of cost of the performance of such contract in such amount as, in the opinion of the Department conducting the renegotiation, fairly represents a properly applicable allowance. In determining the proper allowance, due consideration shall be given to the established sale or market price where there is a representative market for the product in the exempt state, and to such other factors as may be necessary to reflect the purpose and intent of the statutory exemption. In general it is the purpose and intent of this provision to allow to the contractor engaged in an integrated process of the type described, an item of cost substantially equivalent to that granted by the statute to others who sell an exempt product, namely what he could have realized if he had sold the exempt product at the intermediate stage.

344.4 Profits from Increment in Value of Excess Inventories.

(1) *Statutory Exclusion.* Subsection (i) (3) of the Renegotiation Act of 1943, insofar as it relates to the exclusion of profits from the increment in value of excess inventories provides:

"(3) . . . Notwithstanding any other provisions of this section there shall be excluded from consideration in determining whether or not a contractor or subcontractor has received or accrued excessive profits that portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory. For the purposes of this paragraph the term 'excess inventory' means inventory of products, hereinbefore described in this paragraph, acquired by the contractor or subcontractor, in the form or at the state in which contracts for such products on hand and on contract would be exempted from this section by subsection (i) (1) (B) or (C), which is in excess of the inventory reasonably necessary to fulfill existing contracts or orders. That portion of the profits, derived from contracts with the Departments and subcontracts, attrib-

utable to the increment in value of the excess inventory, and the method of excluding such portion of profits from consideration in determining whether or not the contractor or subcontractor has received or accrued excessive profits, shall be determined in accordance with regulations prescribed by the Board. In the case of a renegotiation with respect to a fiscal year ending prior to July 1, 1943, the portion of the profits, derived from contracts with the Departments and subcontracts, attributable to the increment in value of the excess inventory shall (to the extent such portion does not exceed the excessive profits determined) be credited or refunded to the contractor or subcontractor, and in case the determination of excessive profits was made prior to the date of the enactment of the Revenue Act of 1943, such credit or refund shall be made notwithstanding such determination is embodied in an agreement with the contractor or subcontractor, but in either case such credit or refund shall be made only if the contractor or subcontractor, within ninety days after the date of the enactment of the Revenue Act of 1943, files a claim therefor with the Secretary concerned."

(2) *Interpretation and Application.* (a) *Statement of General Principles by the Committee of Conference.* The basic principles of this exclusion are set forth in the following excerpt from the Statement of the Managers of the Committee of Conference on the Revenue Act of 1943.

"The profits realized by a contractor or subcontractor by reason of the increment in value of his excess inventory of the materials described in subsections (i) (1) (B) or (i) (1) (C), in the form or state in which contracts therefor are exempted under such subsections, to the extent that such profits are applicable to contracts with the departments or subcontracts, shall be excluded from consideration in determining excessive profits. The test as to whether or not any contractor or subcontractor has an excess inventory of such materials turns upon whether or not the contractor or subcontractor has in inventory quantities of such materials in excess of the amount reasonably necessary to fulfill existing contracts or orders. The method of determining the portion of the profits applicable to contracts with the departments or subcontracts realized by reason of the increment in value of an excess inventory and the method of excluding such portion of such profits from renegotiation will be set out in regulations prescribed by the Board. In the case of a renegotiation with respect to a fiscal year ending prior to July 1, 1943, the portion of the excess inventory (to the extent it does not exceed the excessive profits determined) shall be credited or refunded to the contractor or subcontractor. Where the determination of the excessive profits was made prior to the date of the Revenue Act of 1943, such credit or refund shall be made whether or not the determination is embodied in an agreement with the contractor or subcontractor. In all such cases the credit or refund will be made only if the contractor or subcontractor

(c) The contract was awarded as a result of competitive bidding. A contract will be deemed to have been awarded as a result of competitive bidding only if (i) there has been published advertising or such other solicitation for bids as would open the bidding to all qualified bidders who could have been reasonably expected to bid on a job of the size, character and location concerned, (ii) bids are received from two or more independent, responsible and qualified bidders in actual competition with each other, (iii) the contract is let to the lowest qualified bidder, and (iv) the contract price was not in excess of the low bid received.

(2) In distinguishing a contract for the construction of a building, structure, improvement or similar facility from a contract for the furnishing of machinery or equipment as described in subdivision (1)(b) of this paragraph, regard is to be had to the subject matter of the contract. To the extent that the subject matter of the contract involves the furnishing or the furnishing and installation of machinery or equipment which has or may have use in processing, within the principles stated in paragraph 333.3, the contract will not be deemed to be a contract for the construction of a building, structure, improvement or similar facility, but will be regarded as a contract for the furnishing of machinery or equipment, in accordance with the principles set forth in paragraphs 335.2(2) and 335.2(5) of these Regulations. In a case where the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility and the furnishing of machinery or equipment are embraced within a single contract, the undertaking for the construction or installation of the whole or any integral part of the building, structure, improvement or similar facility may be severed from the undertaking to furnish the machinery or equipment and an appropriate finding made as to that portion of the entire contract which may properly be deemed exempt.

(3) If a construction contract is exempt from renegotiation under the provisions of this paragraph 346.2, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or facilities to be performed at or adjacent to the site of the original project are considered a part of the original construction contract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract.

(4) Determination whether this exemption is applicable to any particular prime contract shall be made, upon the basis of the principles referred to in the preceding subdivisions of this paragraph, by the renegotiation agency of the Department or Service conducting the renegotiation in which such contract is involved, except as provided in 347.2 (2). The renegotiation agency of each Department or Service shall maintain a central file with respect to determinations made by it as to the exempt or non-exempt status of prime contracts.

347. Subcontracts Under Exempt Contracts and Subcontracts.

347.1 Statutory Exemption. Subsection (i) (1) (F) of the 1943 Act provides that it shall not apply to

"(F) any subcontract, directly or indirectly under a contract or subcontract to which this section does not apply by reason of this paragraph."

347.2 Interpretation and Application of Exemption.

(1) It should be noted that the exemption applies only where the subcontract is under a contract or subcontract exempted by paragraph (1) of subsection (i) of the 1943 Act. Thus, subcontracts under prime contracts or subcontracts exempted under the discretionary exemptions authorized by subsection (i)(4) of the 1943 Act, the exemption measured by renegotiable volume under subsection (c)(6), or any other exemption or exclusion contained in the 1943 Act, are not exempted by this provision. (See paragraph 348.5.)

(2) In any case in which the renegotiable status of a subcontract depends upon the exempt or non-exempt status (by reason of the possible application of paragraph 346.2) of a prime contract, the procedure shall be as follows: The Department or Service conducting the renegotiation in which such subcontract is involved shall make direct inquiry of the renegotiation agency of the Department or Service to which the contractor having the prime contract has been assigned for renegotiation, as to any determination made with respect to the exempt or non-exempt status of such prime contract. If no such determination has been made, then the renegotiation agency of the Department or Service to which the prime contractor is assigned (or was assigned, if the assignment has been cancelled) for renegotiation shall, as expeditiously as possible and without awaiting completion of renegotiation with the prime contractor, determine the exempt or non-exempt status of such prime contract and shall promptly advise the Department or Service conducting the renegotiation in which the subcontract in question is involved. If the prime contractor has not been, and will not be, assigned for renegotiation, the Department or Service conducting the renegotiation in which such subcontract is involved shall make direct inquiry of the renegotiation agency of the Department or Service which awarded the prime contract, which shall promptly make a determination of the exempt or non-exempt status of such prime contract and advise the Department or Service conducting the renegotiation in which such subcontract is involved. A determination made with respect to the exempt or non-exempt status of the prime contract shall be controlling with respect to the exempt or non-exempt status of the subcontract.

(3) Subcontracts for the furnishing of packaging materials and containers in which there are delivered materials or products which are exempt from renegotiation under the provisions of subsections (i)(1)(B) or (C) of the 1943 Act relating to certain raw materials or agricultural commodities or which are otherwise exempt under paragraph (i)(1) of the 1943 Act (see paragraphs 333.3 (1), 333.4 (1), 344.5 and 347.2 (1)) constitute subcontracts under exempt prime contracts and are exempt from renegotiation under the provisions of subsection (i)(1)(F) of the 1943 Act.

348. Annual Receipts Under Statutory Minimum.

348.1 Statutory Provision. Subsection (c) (6) of the 1943 Act provides

"(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 Computation of Aggregate Receipts and Accruals.

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (a) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348. For the purpose of applying this provision of the Act gross receipts and accruals will be computed without the elimination of inter-company sales.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 **No Reduction by Refund Below Exemption.**

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a)(5)(B) of the 1943 Act), no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a)(5)(B) of the 1943 Act, no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the refund may reduce the aggregate amount of gross receipts or accruals of any member below the floor specified in subdivision (1) or (2) of this paragraph but the aggregate of the recoveries from such contractors after adjustment for state income taxes must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. In the case of companies renegotiated on a consolidated basis the combined adjusted sales will be computed without the elimination of inter-company sales (see paragraph 348.2(2)).

(5) Except in those cases where prior to the commencement of renegotiation a contractor makes a retroactive price reduction or refund, applicable to the period which is the subject of renegotiation, in an amount at least equivalent to the maximum recovery permitted under the preceding provisions of this paragraph (so that if renegotiation proceedings were conducted there could be no recovery by reason of such limitation) the amount of excessive profits will be estimated by the renegotiating agency in the first instance without regard to the possible final effect of the above limitation on the amount of recovery.

(6) In applying the provisions of this paragraph 348.3 to any case in which an adjustment for state income taxes is required (see paragraph 389), excessive profits shall first be determined and the appropriate adjustment for state income taxes shall be made without regard to any limitations imposed by this paragraph upon the amount of refund. The limitations of this paragraph shall then be applied in determining the amount to be refunded.

348.4 **Tests of "Control".** In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

(2) *Individual Control*: An individual who owns more than 50% of the voting stock of a corporation controls the corporation and also controls all corporations controlled by the corporation.

(3) *Partnership Control*: A general partner who is entitled to more than 50% of the profits of a partnership controls the partnership.

(4) *Joint Venture Control*: A joint venturer who is entitled to more than 50% of the profits of a joint venture controls the joint venture.

(5) *Other Cases*: Actual control is a question of fact. Whenever it is believed that actual control exists even though the foregoing conditions are not fulfilled, the matter may be determined by the Department or Service conducting the renegotiation.

348.5 **Subcontracts Under Contracts Exempt Under the Statutory Minimum.** Sales under subcontracts are not exempt solely because the purchaser is a contractor who is exempt because his annual receipts and accruals are under the statutory minimum, since the exemption of subsection (i) (1) (F) of the 1943 Act is limited to subcontracts under contracts and subcontracts exempt by reason of subparagraph (1) of paragraph (i) of the 1943 Act. (See paragraph 347.2.)

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improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing;

(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3. Accordingly, the War Contracts Price Adjustment Board, in accordance with subsection (i)(4) of the Renegotiation Act, has exempted such contracts and subcontracts from all of the provisions of the Act.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular prime contract shall be made, upon the basis of the principles referred to in the preceding subdivisions of this paragraph, by the renegotiation agency of the Department or Service conducting the renegotiation in which such prime contract is involved. The renegotiation agency of each Department or Service shall maintain a central file with respect to determinations made by it as to the exempt or non-exempt status of prime contracts. In any case in which the renegotiable status of a construction subcontract is dependent upon the applicability or nonapplicability of the provisions of this paragraph 355.3 to a prime contract, the procedure to be followed shall be the same as is provided in paragraph 347.2(2). If the exempt or non-exempt status of a construction subcontract is not dependent upon the status of a prime contract, then the renegotiation agency of the Department or Service conducting the renegotiation in which such subcontract is involved shall determine the exempt or non-exempt status of such subcontract.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 **Statutory Authority.** Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 **Exemption.** (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(3) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(3) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

356.3 **Cross reference.** For an exemption of subcontracts under certain public utility contracts, see paragraph 842.6.

357. **Delegation of Authority to Make Permissive Exemptions.** The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board. The War Contracts

Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts or subcontracts under such contracts entered into pursuant to the authority of such Secretary. Such delegation of authority, however, must be exercised in accordance with interpretations of the Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegation within their respective Departments. (See paragraph 821.1.)

358. **Requests for Exemption.** All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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747 . . Action by the War Contracts Price Adjustment Board after Review
747.1 . . . Order
747.2 . . . Notice
748 . . Withholding Orders
748.1 . . . Direction to a Contractor to Withhold
748.2 . . . Direction to a Contractor to Pay Over Amounts Withheld

Section 5

FORMS OF REPORT

751 . . . Progress and Operations Reports
751.1 . . . Form No. SPRA-O (Weekly Progress Report of Departments)
751.2 . . . Instructions for Preparation of Departmental Board Weekly Progress Report (Form SPRA-O)
751.3 . . . Form No. SPRA I (Weekly Progress Report of War Department Services)
751.4 . . . Instructions for Preparation of War Department Weekly Progress Report (Form SPRA I)
751.5 . . . Form No. SPRA I-B (War Department Price Adjustment Board "Status of Renegotiation Report")
751.6 . . . Form No. SPRA I-BB (1943 Fiscal Year Assignments "Status of Renegotiation Report")
751.7 . . . Form No. SPRA I-C (War Department Price Adjustment Board "Operations Report")
751.8 . . . Form No. SPRA I-CC (1943 Fiscal Year Assignments "Operations Report")
751.9 . . . Form No. WCPAB-4 (Report of Recoveries Effected by Statutory Renegotiation)
751.10 . . Instructions for Preparation of Departmental Report of Recoveries Effected by Statutory Renegotiation (Form WCPAB-4)
752 . . . Statement to Be Furnished Contractor
752.1 . . . General Instructions
752.2 . . . Form of Statement and Specific Instructions as to Its Preparation (Statutory)
752.3 . . . Substitute Paragraphs for the Statement Where Statutory Determination Has Not Yet Been Made
753 . . . Summary of Financial Data—Spread Sheet

Sections 6-8

Reserved

Section 9

ADDRESSES

791 . . . War Contracts Price Adjustment Board
791.1 . . . Principal Office
791.2 . . . Members
791.3 . . . Office of General Counsel
791.4 . . . Assignment Office
791.5 . . . Pentagon Office
792 . . . Departmental Price Adjustment Boards
793 . . War Department Price Adjustment Sections
793.1 . . . Headquarters
793.2 . . . Field Offices of Price Adjustment Sections
794 . . . Navy Department
794.1 . . . Navy Price Adjustment Board
794.2 . . . Services and Sales Renegotiation Section
794.3 . . . Price Revision Division
795 . . . Related Offices
796 . . . War Department Patent Royalty Adjustment Offices
797 . . . Reconstruction Finance Corporation Price Adjustment Sections
797.1 . . . Headquarters
797.2 . . . Field Offices of Price Adjustment Sections

798...War Department Power Procurement Officer
798.1...Headquarters
798.2...Field Offices
799...War Shipping Administration
799.1 War Shipping Administration Price Adjustment Board

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705.7 Form No. SPRA I-5c (Completed Clearances; Department Transmittal Report).

SPRA I-5c Completed Clearances Department Transmittal Report No.....

From: ..... (Department) ..... (Date)

To: Assignments and Statistics Branch WDPAB—Statistics & Progress Section

Following is a report on Completed Clearances for the War Contracts Price Adjustment Board as evidenced by attached Tabulation Forms SPRAE-8 covering each Clearance:

1943 Assignment Number	*Name*	*Tabulation Forms SPRAE-8 Attached*

Reconciliation

Previous Completed Clearances data delivered to WDPAB _____

Plus—Above _____

Cumulative Total—Completed Clearances in hands of WDPAB

(SUBMIT IN DUPLICATE)

705.8 Form No. SPRAE-8 (Identification, Tabulation Form).

TABULATION FORM

Identification (All Cards)

1. Assignment Number (....) (....) (....) (....) (....)
2. Corporation, Partnership, or Owner (C, P, or O) (....)
3. Assignment & Location (....) (....) (....)
4. Based on Approved or Final Figures (A or F) (....)
5. Fiscal Year ends, Month (....) (....)
6. Fiscal Year ends, Year (....)

CARD NO. 0

A. Fixed Price Net Sales (Before Adjustment) .....
B. Fixed Price Basic Profit Before Taxes (Before Adjustment) .....
..... Fields C-D-E-F
G. % Basic Profit on Fixed Price Sales (Before Adjustment) .....

CARD NO. 1

7. Fixed Price Net Sales (After Adjustment) .....
8. Fixed Price Basic Profit Before Taxes (After Adjustment) .....
9. Amount Recovered .....
10. CPFF Net Sales (After Adjustment) .....
11. CPFF Basic Profit Before Taxes (After Adjustment) .....
12. CPFF Amount Recovered .....
13. % Basic Profit on Fixed Price Sales (After Adjustment) .....
14. % CPFF Basic Profit Before Taxes (After Adjustment) .....

CARD NO. 2

15. Non-Renegotiable Net Sales .....
16. Non-Renegotiable Basic Profit (Before Taxes) .....
17. Total Business (Except CPFF) Net Sales After Adjustment .....
18. Total Business (Except CPFF) Basic Profit Before Taxes After Adj. .....
19. Net Profit After Federal Income Taxes (Including EPT Credit) .....
..... Field 20
21. % Basic Profit (Before Taxes) on Non-Renegotiable Sales .....
22. % Basic Profit Before Taxes on Total Business After Adj. (Exc. CPFF)
23. % Profit on Net Worth .....

CARD NO. 3

24. 1st Prior Year Total Net Sales .....
25. 1st Prior Year Basic Profit Before Taxes .....
26. 2nd Prior Year Total Net Sales .....
27. 2nd Prior Year Basic Profit Before Taxes .....
28. Total Business 1936-39 Average Net Sales .....
29. Total Business 1936-39 Average Basic Profit Before Taxes .....
30. 1st Prior Year % Basic Profit Before Taxes .....
31. 2nd Prior Year % Basic Profit Before Taxes .....
32. % Basic Profit on Sales 1936-39 Average (Before Taxes) .....

CARD NO. 4

33. Govt. Fac. Fix Price .....
34. Govt. Fac. CPFF .....
35. Govt. Fac. Advances .....
36. Cert. of Necessity .....
37. V Loans .....
38. Net Plant .....

CARD NO. 5

39. 2nd Prior Year No. Persons .....
40. Compensation 2nd Prior Year .....
41. 1st Prior Year No. Persons .....
42. Compensation 1st Prior Year .....
43. Current Year No. Persons .....
44. Compensation Current Year .....

CARD NO. 6		
Product	*State*	*City*
.....	.....	.....
.....	.....	.....
(Do Not Write In This Space)		

Principal Functions of Contractor
.....
.....

Products (In Order of Importance)
1. .....
2. .....
3. .....

CARD NO. 7
Company Name
(.....)

CARD NO. 8
City and State
(.....)

SPRAE-8
7-3-44

ASSIGNMENT NO. & NAME OF ALL SUBSIDIARIES INCLUDED IN AGREEMENT:

..... (.....)
..... (.....)
..... (.....)
..... (.....)

(USE REVERSE SIDE FOR ADDITIONAL SUBSIDIARIES)

25-6012-2M

[The next page is 741.]

705.9 Instructions for Preparation of Identification, Tabulation Form (SPRAE-8)

INSTRUCTIONS FOR PREPARING TABULATION FORM SPRAE-8

Items

1. Insert PAB Assignment Number
2. Insert "C" "P" or "O"
3. Leave Blank
4. Insert "A" or "F"
5. Show month of fiscal year by numeral (If for period more or less than a year, show total of months involved)
6. Show year by last numeral (Note exception in Item 5. Cases other than for a year, will show the year involved (based on last month renegotiated) outside and directly below space on form)
9. (A) Amount Recovered, where applicable, to be Net Recovery after adjustment for State Income Taxes
   (B) Amount Recovered, via Unilateral Determination, will be marked by inserting X to the right of figures

33-35. Indicate only Net Balance of Facilities and Advances outstanding at the time of renegotiation

36. Show Certificates of Necessity *obtained* only
37. Show amounts in use of V Loans and V-T Loans

39-44. Main Compensation only. (Disallowances actual, to be marked on right of figures by X (Do not show amount disallowed) Indicate Disallowances by symbol for all years. Show Corporate Compensation only)

Card 6. Leave Blank

Card 7. Limit or abbreviate company name to 24 letters (including spaces). Insert surname of contractor first, VIZ., *DOE JOHN J. & CO.*

Card 8. Limit as in Card 7

Note: Names of subsidiaries limited to 23 letters (including spaces)

GENERAL

A. Omit 000 for all dollar amounts and adjust figures to nearest thousand
B. All percentage figures must be calculated to 1/10 (one-tenth) of 1%, i. e., 14.1, 13.8, 15.0
C. All deficit figures to be marked (on right) by X
D. At bottom of page, describe *function, main product, material used*

---

706. Transmittal Forms to and from Services

706.1 Form No. SPRA I-1 (Assignment Transmittal to Services)

(This form is set out in paragraph 705.1)

706.2 Form No. SPRA I-2a5dl (Reassignment Request; Cancellation Request)

(This form is set out in paragraph 705.2)

706.3 Form No. SPRA I-2ax5dlx (Disapproved Reassignments; Disapproved Cancellations)

(This form is set out in paragraph 705.3)

706.4 Form No. SPRA I-2b5d2 (Approved Reassignment; Approved Cancellation)

(This form is set out in paragraph 705.4)

706.5 Form No. SPRA I-5abc (Completed Settlements; Impasses; Completed Clearances)

SPRA I-5abc { Completed Settlement or Service Transmittal Report No. .....
Impasse or
Completed Clearances

From: ..... (Service) ..... (Date)

To: Assignments and Statistics Branch WDPAB—Statistics & Progress Section

The following Completed Settlements, Impasses or Clearances are delivered to you for necessary action as indicated below:

(DO NOT COMBINE. TRANSMIT EACH TYPE OF REQUIRED ACTION SEPARATELY)

		REQUIRED ACTION BY WDPAB				
1943		*SETTLEMENTS*			*CLEARANCES*	
Assignment Number	*Name**	*(5a-1) Review*	*(5a-2) Approval*	*(5b) Impasse*	*(5c-1) Review*	*(5c-2) Approval*
Previous total delivered to WDPAB						
Cumulative Total to date						

* *Note:* List parent company and indent under it all subsidiaries and/or affiliates included in the agreement whether or not previously assigned to your Service by WDPAB. Request for Assignment Form No. 101 should be attached for each unassigned subsidiary or affiliate contained in the agreement.

Each Settlement for Review—Should be accompanied by SPRAS 138
Each Settlement for Approval—Should be accompanied by SPRAS 119
Each Clearance for Review—Should be accompanied by SPRAS 138
Each Clearance for Approval—Should be accompanied by SPRAS 119A

(SUBMIT IN DUPLICATE)

Rev 3/24/44

751.8 Form No. SPRA I-CC (1943 Fiscal Year Assignments "Operations Report").

SPRA I-CC (Revised 1 August 1944)
Note: Figures in parentheses indicate net change from the previous report

OPERATIONS REPORT 1943 FISCAL YEAR ASSIGNMENTS

1943

Close of Friday .....

DETAILS OF COLUMN (F) SPRA I-BB COVERING 1943 FISCAL YEAR ASSIGNMENTS DELIVERED BY SERVICES AND REPORTED BY DEPARTMENTS TO WDPAB

	War Department	Navy PAB	Navy OGC	Maritime	RFC	Treasury	War Shipping	Total (Column (F) of Status Report)	In Process at WDPAB	Completed by WDPAB
5a *Completed Settlements*	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
b *Impasse Cases*										
In Process at WDPAB	.....	XX	XX	XX	XX	XX	XX	.....(..)	.....	.....
Completed—Agreement	.....	XX	XX	XX	XX	XX	XX	.....(..)	.....	.....
Completed—Unilateral	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
								(..)		
c *Completed Clearances*	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
d *Cancellations*										
Requested—Pending	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
Approved by WDPAB	.....	.....	.....	.....	.....	.....	.....	.....(..)	XX	.....
								(..)		
Total Current Report	.....	.....	.....	.....	.....	.....	.....	.....(..)	.....	.....
Total Previous Report	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Net Change	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)	(..)

Prepared by: Assignments and Statistics Branch WDPAB, Statistics and Progress Section

751.9 Form No. WCPAB-4 (Report of Recoveries Effected by Statutory Renegotiation.)

WCPAB-4 Departmental Report of Recoveries Effected by Statutory Renegotiation.
Close of Friday

FROM: ....
(Department)

TO: War Contracts Price Adjustment Board
Attention: Assignments and Statistics Branch, WDPAB,
Statistics and Progress Section

This Department has entered into legally effective agreements and issued unilateral determinations providing for recoveries of excessive profits in the amounts stated below. The figures given are cumulative totals complete up to and including .....

RECOVERIES FROM CONTRACTORS WITH FISCAL YEARS ENDING IN	AGREEMENTS	UNILATERAL DETERMINATIONS
1941-1942	$.....	$.....
1943 *	$.....	$.....
1944 *	$.....	$.....
TOTAL	$.....	$.....

* After Deduction of State Taxes Determined to be Applicable to Non-Excessive Profits.

.....
(Department)
PRICE ADJUSTMENT BOARD

By .....
(Member)

751.10 Instructions for Preparation of Departmental Report of Recoveries Effected by Statutory Renegotiation (Form WCPAB-4).

INSTRUCTIONS FOR THE PREPARATION OF DEPARTMENTAL REPORT OF RECOVERIES EFFECTED BY STATUTORY RENEGOTIATION (WCPAB-4)

The Departmental Report of Recoveries Effected by Statutory Renegotiation will be submitted at the close of business every fourth Friday beginning as of Friday, 17 November 1944.

1. Navy Department—Price Adjustment Board
2. Navy Department—Office of the General Counsel
3. Maritime Commission—Price Adjustment Board
4. Reconstruction Finance Corporation—Price Adjustment Board
5. Treasury Department—Price Adjustment Board
6. War Shipping Administration—Price Adjustment Board

to the War Contracts Price Adjustment Board through the Assignments and Statistics Branch of the War Department Price Adjustment Board. The Report will show by fiscal years the cumulative total of recoveries pursuant to legally effective agreements and the cumulative total of recoveries pursuant to legally effective issued unilateral determinations and will be signed by a member of the Departmental Board submitting the Report.

752. Statement to Be Furnished Contractor.

752.1 General Instructions.

(1) Subsection (c) (1) of the Renegotiation Act of 1943 requires that whenever the War Contracts Board makes a determination by agreement or order, there must be furnished to the contractor, at his request, a statement showing the determination of excessive profits, the facts used as a basis therefor and the reasons for such determination.

(2) The manner in which and the time at which the statement will be given to the contractor are described in paragraph 520 and following, of these Regulations.

(3) The statement cannot be used in The Tax Court of the United States as proof of the facts or conclusions stated therein.

(4) The statement is divided into four principal parts:

(a) Designation of the contractor and the fiscal year under review.

(b) Determination of excessive profits.

(c) Summary of the relevant facts upon which the determination is based.

(d) Reasons for the determination.

752.2 Form of Statement and Specific Instructions as to Its Preparation (Statutory).

(1) Designation of the Contractor and Fiscal Period

To: .....
(Contractor's name and address)

Fiscal Year .....

In accordance with the provisions of subsection (c)(1) of the Renegotiation Act, you are hereby furnished a statement showing, for your fiscal year above set forth, the determination of excessive profits for said fiscal year and the facts and reasons upon which the determination is based.

If the determination is by order other than an order of the War Contracts Price Adjustment Board, the following clause will be inserted at this point:

"This statement is final only in the event that the determination by order to which it relates is final."

(2) Determination of Excessive Profits.

Pursuant to the provisions of the Renegotiation Act, it has been determined by ....., dated .....,
(order) (agreement)
that, of the profits received by or accrued to you during said fiscal year under contracts or subcontracts subject to renegotiation, the amount of $ ..... constitutes profits which should be eliminated.

(3) Summary of the Relevant Facts.

(a) Financial Comparisons.

(i) There shall be made part of this statement comparative financial statements of the contractor which may be in the form of exhibits attached to the statement. If exhibits are used, they should be described and referred to in this part of the statement.

(ii) Comparative balance sheets prepared from those furnished by the contractor, as of the end of the fiscal year 1936 and of each fiscal year thereafter up to and including the fiscal year under review, shall be included.

(iii) Comparative income statements for the same fiscal periods shall be included.

(iv) The statements shall be supplemented by such statistical data related to the fiscal periods as may be deemed pertinent to the renegotiation.

(v) Any disallowance (or additional allowance) as compared with costs shown on the contractor's books shall be indicated.

(vi) The financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted in the discretion of the Department giving a statement furnished after a determination by agreement. In such case, the statement should refer to Exhibit A to the renegotiation agreement (see paragraph 741.3) and also to the contractors annual earnings before taxes for the fiscal year 1936 and for each fiscal year thereafter up to and including the fiscal year under review, to the extent that such information is available and pertinent. When the statement is furnished after a determination by agreement, documentary information furnished by the contractor and properly identified, relating to the financial comparison referred to in subparagraphs (ii) and (iii) above may be incorporated by reference.

(vii) In the case of a statement furnished after a determination by agreement or order, the financial comparison referred to in subparagraphs (ii) and (iii) above may be omitted to the extent information therefor is not made available to the renegotiating officials by the contractor.

(b) Other Facts Related to the Determination.

The statutory factors required to be taken into consideration by subsection (a) (4) (A) of the Renegotiation Act of 1943 must receive consideration and the basic facts related thereto set forth, whether favorable or unfavorable to the contractor. The basic facts will be those resulting from consideration of the data submitted or assembled for the purpose of the renegotiation. Any other facts considered and pertinent to the consideration of the determination shall also be set forth.

(4) Reasons for the Determination.

A statement shall be made of the reasons for the determination in the light of all of the facts and factors referred to in the foregoing portions of the statement, indicating generally the relative significance and importance of such facts and factors. Return on net worth shall be computed before deductions for Federal income taxes and be based on that portion of the net worth determined to have been used in connection with the performance of renegotiable contracts. If this is not practicable, reference to net worth shall be omitted. Such matters as (a) profits on non-renegotiable business and (b) profits after Federal taxes do not constitute factors or reasons to be taken into consideration in the renegotiation proceeding or included in the statement to be furnished to the contractor, although such figures are frequently included in the financial data submitted by the contractor and attached as exhibits to the statement.

752.3 **Substitute Paragraphs for the Statement Where Statutory Determination Has Not Yet Been Made.**

(1) Designation of the Contractor and Purpose of Statement

To .....
(Contractor's name and address)

Fiscal Year .....

You are hereby furnished with a statement of the facts and reasons upon which the opinion of (name of Board or Section) as to the amount of excessive profits for your fiscal year above set forth was based. Such statement is furnished for the purpose of assisting you in determining whether or not you wish to enter into an agreement providing for the elimination of such excessive profits. It is not a statutory statement as provided in subsection (c) (1) of the Renegotiation Act.

(2) Statement of Opinion of Excessive Profits.

In the opinion of (name of Board or Section) the amount of excessive profits received or accrued by you during such fiscal year under contracts or subcontracts subject to renegotiation is $ .....

(3) Summary of the Relevant Facts.

The instructions of paragraph 752.2 (3) applicable to a statement after a determination by agreement apply also to a statement where a statutory determination has not yet been made. In such case, Exhibit A to the renegotiation agreement may be referred to as a preliminary draft and submitted to the contractor in such form (see paragraph 752.2 (3) (vi)).

(4) Reasons for the Determination.

See paragraph 752.2(4).

753. Summary of Financial Data—Spread Sheet.

[Actual size of form 7" x 13"]

NAME AND ADDRESS OF CONTRACTOR

CORP. ( ) PART. ( ) PROP. ( )

FISCAL YEAR ENDED _____ 194__

RENEGOTIATED BY

DATE FINAL MEETING

APPROVED BY

DATE AGREEMENT APPROVED

	NET SALES	PROFIT BEFORE TAXES ON INCOME	% OF NET SALES
RENEGOTIABLE:			
FIXED PRICE BEFORE ADJUSTMENT	$	$	
AMOUNT RECOVERED			X X X
FIXED PRICE AFTER ADJUSTMENT			
CPFF BEFORE ADJUSTMENT			
AMOUNT RECOVERED			X X X
CPFF AFTER ADJUSTMENT			
NON-RENEGOTIABLE			
(DIS.) ALLOWANCES, NET	X X X		X X X
OTHER (DEBITS) OR CREDITS, NET	X X X		X X X
TOTAL BUSINESS BEFORE ADJUSTMENT			
TOTAL BUSINESS AFTER ADJUSTMENT			

PEACETIME PRODUCTS

WARTIME PRODUCTS

A. — $_____

B. — $_____

C. — $_____

CHARACTER OF OPERATION

PRIOR YEARS	NET PROFIT (INCLUDING E. P. T. CREDIT) AFTER TAXES	% OF NET WORTH
	$	
1942 RENEGOTIABLE FIXED PRICE BEFORE ADJ.	X X X	X X X
1942 RENEGOTIABLE FIXED PRICE AFTER ADJ.	X X X	X X X
1942 TOTAL AFTER RENEGOTIATION		
1941 (GOVT. BUS. ___%)		
1940 (GOVT. BUS. ___%)		
1939 (GOVT. BUS. ___%)		
1938		
1937		
1936		
1936 — 1939 AVERAGE		

TOTAL MATERIALS AND SUBCONTRACTING _____ % OF COST OF RENEGOTIABLE SALES

MATERIALS FURNISHED BY GOVT. OR CUSTOMER FOR RENEGOTIABLE BUS. $_____

	AMOUNT	AS OF
CERTIFICATES OF NECESSITY	$	
GROSS PLANT		
NET PLANT		
NET WORKING CAPITAL		
GOVT. FACILITIES, FIXED PRICE		
GOVT. FACILITIES, CPFF		
GOVT. ADVANCES CPFF		
GOVT. ADVANCES, FIXED PRICE		
OTHER GOVT. FINANCING		
LONG TERM DEBT		
NET WORTH		

SALARIES	NO.
1943 $_____	( )
1942 _____	( )
1941 _____	( )
1940 _____	( )

SPREAD SHEET

PREPARED BY

APPROVED BY

DATE

NET WORTH, AS OF BEG. ( ) END. ( ) 1936, $_____ 1937, $_____ 1938, $_____ 1939, $_____ 1940, $_____ 1941, $_____

PRICE REDUCTIONS, POLICIES AND COMPARISONS

EXPENSE FACTORS

COST, EFFICIENCY, PRODUCTION FACTORS

SPECIAL FACTORS

REN. RAND F. P.-S. 1

Sections 6-8 Reserved.

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Section 9

ADDRESSES

791. War Contracts Price Adjustment Board.

791.1 Principal Office.

718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 4786

791.2 Members.

Brig. Gen. Albert J. Browning, Chairman
(War Department)
Room 5D675, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3119

Mr. W. John Kenney, Vice Chairman
(Navy Department)
Room 102, Premier Building
718 18th Street, N. W.
Washington 25, D. C.

Tel. Republic 7400
Ext. 5169 or 62729

Mr. Kenneth F. Clark
(Maritime Commission)
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5, D. C.

Tel. Executive 3340
Ext. 1047

Captain H. C. Maull, Jr.
(Treasury Department)
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Mr. Charles T. Fisher, Jr.
(Reconstruction Finance Corporation)
Room 1167 Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

Mr. Carman G. Blough
(War Production Board)
Department 1400
4th and Independence Avenue, S. W.
Washington 25, D. C. Tel. Republic 7500
Ext. 71783

791.3 Office of General Counsel.

War Contracts Price Adjustment Board
Attention: Mr. Frederick W. R. Pride, General Counsel
Room 126, Premier Building
718 18th Street, N. W.
Washington 25, D. C. Tel. Republic 7400
Ext. 62022 or 2029

791.4 Assignment Office.

Assignments and Statistics Branch
Renegotiation Division
Room 3D 573, The Pentagon
Washington 25, D. C. Tel. Republic 6700
Ext. 73678

or

Clearance and Assignment Officer
Post Office Box 2707
Washington 25, D. C. Tel. Republic 6700
Ext. 73678

791.5 Pentagon Office.

Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73636

792. Departmental Price Adjustment Boards.

War Department Price Adjustment Board
Attention: Lt. Col. W. H. Coulson, Executive Officer
Room 3D 573, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 5672

Navy Price Adjustment Board
Attention: Mr. W. John Kenney, Chairman
718 18th Street, N. W.
Washington 25, D. C. Tel. Republic 7400
Ext. 5169 or 62729

Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington 25, D. C.
Tel. Republic 7400
Ext. 61468

Treasury Department Price Adjustment Board
Attention: Captain H. C. Maull, Jr., Chairman
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Maritime Commission Price Adjustment Board
Attention: Mr. A. G. Rydstrom
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5 D. C.

Tel. Executive 3340
Ext. 606 or 607

War Shipping Administration Price Adjustment Board
Attention: Mr. James L. Murphy, Chairman
39 Broadway
New York 6, New York

Tel. Whitehall 3-8000

Reconstruction Finance Corporation Price Adjustment Board
Attention: Mr. Charles T. Fisher, Jr., Chairman
Lafayette Building, 811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

793. War Department Price Adjustment Sections.

793.1 Headquarters.

Price Adjustment Branch
Control Office
AC/AS M. & S., Army Air Forces
Room 5C 964, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Exts. 72209
4420
4577

Price Adjustment Office
Materiel Command, Army Air Forces
Wright Field
Dayton, Ohio

Tel. Kenmore 7111
Exts. 22135
23292
25225

The Chief of Chemical Warfare
Attention: Lt. Col. Robert M. Estes
Purchase Policies Branch
Baltimore Sub-Office, OC CWS
200 West Baltimore Street
Baltimore 1, Maryland

Tel. Lexington 0710

The Chief of Engineers
Attention: Mr. H. W. Loving
Price Adjustment Section
Room 5160, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 76225

The Chief of Ordnance
Attention: Lt. Col. John M. Marble
Price Adjustment Branch
Room 5D 400, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2283

The Quartermaster General
Attention: Lt. Col. H. F. Colt
Price Adjustment Section
Room 2327, Tempo. B.,
2nd and Q Streets, S. W.
Washington 25, D. C.

Tel. Republic 6700
Ext. 3744 or 6485

The Chief Signal Officer
Attention: Mr. Wilfred Goodwyn
Price Adjustment Section
Room 2C 285, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 73278

The Surgeon General
Attention: Lt. Col. Lee I. Park
Renegotiation Division
Room 518, Maritime Building
1818 H Street, N .W.
Washington 25, D. C.

Tel. Republic 6700
Ext. 78455

The Chief of Transportation
Attention: Col. James F. Mitchell, Jr.
Price Adjustment Section
Room 3A 670, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 4505

War Department Power Procurement Officer
Attention: Major George P. Steinmetz, Deputy,
Utilities Price Adjustment Section
Room 5004, New War Dept. Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79994 or 76210

793.2 Field Offices of Price Adjustment Sections.

(1) *Army Air Forces:*

39 South La Salle Street, Chicago 3, Illinois,
Tel. Randolph 9720.

Enquirer Building, 617 Vine Street, Cincinnati, Ohio,
Tel. Cherry 8320.

4614 Prospect Avenue, Cleveland 3, Ohio,
Tel. Endicott 7200.

8505 West Warren Avenue, Detroit 32, Michigan,
Tel. Hogarth 8730.

3636 Beverly Boulevard, Los Angeles 54, California,
Tel. Drexel 7081.

67 Broad Street, New York 4, New York,
Tel. Whitehall 4-1600.

420 West Douglas Avenue, Wichita 1, Kansas,
Tel. Wichita 5-4621.

(2) *Corps of Engineers:*

50 Whitehall Street, Atlanta 2, Georgia,
Tel. Jackson 6180.

101 East Fayette Street, Baltimore 2, Maryland,
Tel. Plaza 8060.

75 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 8100.

20 North Wacker Drive, Chicago 6, Illinois
Tel. Randolph 1311.

1120 Huntington Bank Building, Columbus 16, Ohio,
Tel. Main 6481.

Santa Fe Building, 1114 Commerce Street,
Dallas 2, Texas,
Tel. LD 930.

270 Broadway, New York 7, New York,
Tel. Barclay 7-1616.

Farm Credit Building, 19th and Douglas,
Omaha 1, Nebraska,
Tel. Webster 5966.

351 California Street, San Francisco, California,
Tel. Garfield 6900.

(3) *Ordnance Department:*

700 Frank Nelson Building, Birmingham 1, Alabama,
Tel Birmingham 4-7511.

140 Federal Street, Boston 10, Massachusetts,
Tel. Hubbard 9800.

38 South Dearborn Street, Chicago 3, Illinois,
Tel. Franklin 4900.

Big Four Building, Cincinnati 1, Ohio,
Tel. Cherry 3800.

1006 Terminal Tower Building, Cleveland 13, Ohio,
Tel. Main 0670.

1832 National Bank Building, Detroit 32, Michigan,
Tel. Randolph 9360.

Room 1815—80 Broadway, New York 5, New York,
Tel. Hanover 2-7300.

150 South Broad Street, Philadelphia 2, Pennsylvania,
Tel. Locust 4020.

1202 Chamber of Commerce Building, Pittsburgh 19, Pennsylvania,
Tel. Grant 5966.

1242 Mercantile Building, Rochester 4, New York.
Tel. Stone 3203.

3663 Lindell Boulevard, St. Louis 8, Missouri,
Tel. Jefferson 7380.

100 McAllister Street, San Francisco 1, California.
Tel. Underhill 3306.

95 State Street, Springfield 3, Massachusetts.
Tel. 7-0211

(4) *The Quartermaster General:*

1 State Street, Boston 9, Massachusetts,
Tel. Lafayette 3712.

333 North Michigan Avenue, Chicago 1, Illinois,
Tel. Franklin 5910.

521 Fifth Avenue, New York 17, New York,
Tel. Murray Hill 2-2622.

520 Kohl Building, Montgomery and California Streets, San Francisco 4, California,
Tel. Exbrook 7467.

16th Floor Woodside Building, Greenville, South Carolina,
Tel. 7140.

CHAPTER VIII

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Section 4

EXEMPTIONS

841. Raw Material Exemption. Pursuant to subsection (i) (2) of the 1943 Act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (i) (1) (B) of the 1943 Act.

(1) The term "exempted products", as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.

Alumina; aluminum sulfate; aluminum ingots and pigs.

Asphalt, natural.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide; antimony sulfide.

Arsenic, crude; arsenic powder; arsenious oxide (white arsenic)

Asbestos rock; asbestos fibre.

Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.

Bentonite, dried, crushed, granulated and pulverized.

Beryl ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.

Bismuth metal.

Borax.

Cadmium flue dust; cadmium oxide; cadmium balls and slabs.

China clay; kaolin; fire clay; brick and tile made from clays other than kaolin, china and fire clay.

Chlorine and hydrogen produced directly by electrolysis of salt brine.

Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.

Coal, prepared; run-of-mine coal.

Cobalt oxide; cobalt anodes, shot and rondelles.

Columbium ore and concentrates; columbium oxide; ferrocolumbium.

Copper ore, crude; copper ore, concentrated; copper matte; blister copper; copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.

Corundum ore and concentrates; corundum grain.

Cryolite ore and concentrates.

Diaspore; diaspore brick.

Diatomaceous silica, lump, block, brick and powder.

Dolomite; crushed dolomite.

Feldspar, crude and ground.

Ferrosilicon.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Fuller's earth.

Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.

Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.

Gypsum, crude; calcined gypsum.

Indium metal.

Industrial diamonds.

Iridium metal, including ingot and powder.

Iron ore, crude; pig iron.

Kyanite ore and concentrates; kyanite brick.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Limestone; crushed limestone.

Magnesite; dead burned magnesite.

Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.

Mercury ore; mercury metal.

Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.

Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.

Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.

Monel ore; monel matte; monel ingots, pigs, and shot, produced from monel matte.

Natural gasoline; casinghead gasoline; residue gas.

Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Osmium metal, including ingot and powder.

Palladium metal, including ingot and powder.

Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.

Platinum ore and concentrates; platinum metal, including ingot and powder.

Pumice, lump.

Quartz crystal, raw.

Radium bromide; radium sulfate; radium gas.

Rhodium metal, including ingot and powder.

Ruthenium metal, including ingot and powder.

Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.

Sea shells; oyster shells; clam and reef shells.

Selenium metal.

Silver, refined, including bars, shot, powder and grains.

Sodium aluminate.

Stone, rough dimension.

Sulfur, crude.

Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).

Standing timber, logs, logs sawed into length, and logs with or without bark.

Talc, crude, ground and sawed.

Tantalum ore and concentrates; tantalum double fluoride.

Tellurium metal.

Tin ore and concentrates; refined pig tin.

Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide; ferrotitanium.

Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide; tungstic acid.

Uranium ores and concentrates; uranium oxide.

Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.

Whiting; chalk lump.

Zeolites derived from Glauconite.

Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.

Zirconium ores and concentrates.

(2) Subject to the provisions of paragraph 3 hereof, it is determined that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use" within subsection (i) (1) (B) of the

(1) Contracts and subcontracts with common carriers to furnish transportation by railroad, motor vehicle, pipe line or air, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

(2) Contracts and subcontracts with common carriers to furnish inland or coastal transportation by water, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for transportation of a comparable character.

(3) Contracts and subcontracts with freight forwarders when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by the Interstate Commerce Commission.

842.4 **Public Utilities—Communications.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943:

(1) Contracts and subcontracts with telephone, telegraph, cable and radio companies to furnish the service of transmitting messages, when made at published rates or charges, fixed, approved or subject to regulation as to the reasonableness thereof by a public regulatory body, or when made at rates or charges which the Department conducting the renegotiation in its discretion shall determine to be no higher than such published rates or charges for service of a comparable character.

842.5 **Public Utilities—Furnishing of Water or Removal of Sewage.**

(1) Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsection (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt to the extent provided in this paragraph from all of the provisions of the Renegotiation Act of 1943:

(a) Any contract or subcontract with a public utility for the furnishing of water or the removal of sewage, except that if the amounts received or accrued under any such contract or subcontract during any particular fiscal year were $10,000 or more, amounts received or accrued under such contract or subcontract for such fiscal year shall not be exempt from renegotiation by reason of this subpara-

graph (a). (If such fiscal year is a fractional part of twelve months, the $10,000 amount shall be reduced to the same fractional part thereof for the purposes of this subparagraph (a)).

(b) Any subcontract with a public utility for the furnishing of water or the removal of sewage without regard to the amounts received or accrued thereunder during any fiscal year, except that

(i) if such subcontract for water or the removal of sewage is with a contractor having a contract with a Department providing for the reimbursement by a Department of costs of the contractor incurred under such subcontract for water or the removal of sewage, or

(ii) if a Department has contracted to pay or guarantee payment of amounts payable under such subcontract for water or the removal of sewage,

then in either such case such subcontract for water or the removal of sewage shall not be exempt from renegotiation by reason of this subparagraph (b).

842.6 **Subcontracts.** Pursuant to subsection (i) (4) of the Renegotiation Act of 1943 (including subsections (i) (4) (B) and (i) (4) (F)) the following classes and types of contracts and subcontracts are exempt from all of the provisions of the Renegotiation Act of 1943.

(1) Subcontracts under any contracts or subcontracts exempted pursuant to paragraphs 842.1 through 842.5 inclusive.

842.7 **Scope of Exemptions.** All of the exemptions made under paragraphs 842.1 through 842.6, inclusive, apply to contracts and subcontracts of the specified classes and types, whether heretofore or hereafter made or performed, and whether or not they contain renegotiation provisions.

843. List of Exempted Foods.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for perishable foods under Section 403 (i) (4) (B) of the Renegotiation Act of 1943.

Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (4) (B) of the Renegotiation Act of 1943, concerning the exemption of contracts and subcontracts for certain perishable goods from renegotiation under the Renegotiation Act of 1943, the War Contracts Price Adjustment Board hereby determines that the foods set forth in the list attached hereto and designated as Exhibit "1" are perishable; and that, in the opinion of the Board, the profits under contracts and subcontracts for the purchase of such foods can be determined with reasonable certainty when the contract price is established; and that contracts and subcontracts, heretofore or hereafter made, for the purchase of such foods are hereby declared to be exempt from all of the provisions of the Renegotiation Act of 1943.

EXHIBIT 1

Fresh Fruits:
- Apples
- Apricots
- Bananas
- Berries (blue and black)
- Cantaloupes
- Cherries
- Cranberries
- Grapes
- Grapefruit
- Honeydew Melons
- Lemons
- Limes
- Oranges
- Pears
- Peaches
- Plums
- Strawberries
- Tangerines
- Watermelons
- Other Miscellaneous Fresh Fruits

Fresh Vegetables:
- Asparagus
- Beans, Lima
- Beans, String
- Beets
- Broccoli
- Cauliflower
- Corn
- Cucumbers
- Egg Plant
- Endive (chicory)
- Greens (collards, etc.)
- Kale
- Lettuce
- Onions, Green
- Onions, Dry
- Parsley
- Parsnips
- Peas
- Peppers, Green
- Potatoes, Irish
- Potatoes, Sweet
- Radishes
- Spinach

Fresh Vegetables—continued
- Squash
- Tomatoes
- Turnips and Rutabagas
- Mushrooms
- Rhubarb
- Other Miscellaneous Fresh Vegetables

Dairy Products:
- Butter (except canned)
- Cheese (except processed canned)
- Ice Cream; ice cream mix in unsealed containers
- Fresh Fluid Milk
- Fresh Fluid Cream

Poultry:
- Chicken (except canned)
- Turkey (except canned)
- Other Poultry (except canned)

Meats:
- Beef (except canned and dehydrated)
- Pork (except canned and dehydrated)
- Lamb and Mutton (except canned and dehydrated)
- Veal (except canned and dehydrated)
- Smoked or Processed Meats (except canned and dehydrated)
- Other Meats (except canned and dehydrated)
- Lard and Lard Substitutes
- Offals (except canned and dehydrated)

Fish and Sea Foods:
- Fresh or Frozen
- Salted or Smoked (except canned)

Frozen Vegetables

Frozen Fruits

Bread and other Bakery Products (except biscuits, crackers, cracker meal, breakfast cereals, hard bread and zwieback)

Potato Chips

Compressed Yeast

Shell Eggs

Margarine

[The next page is 849.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPPLEMENT RR-7

WAR CONTRACTS PRICE ADJUSTMENT BOARD
WASHINGTON

RENEGOTIATION REGULATIONS

for fiscal years ending after June 30, 1943

22 November 1944

SUMMARY OF IMPORTANT AMENDMENTS

The amendments made by this revision are summarized below. The principal changes are:

1. Patent Licenses as Subcontracts. Paragraph 334.3 is rewritten with respect to patent licenses and the effect of Royalty Adjustment Act orders or agreements.

2. Estimate of Excessive Profits Where Refund Limited by "Floor". Subparagraph (5) of paragraph 348.3 requiring with certain exceptions an estimate of excessive profits where the recovery is limited by the "floor" is deleted.

3. Exemption of Construction Contracts and Subcontracts. The heading of paragraph 355.3 is amended to make it applicable to construction contracts and subcontracts entered into subsequent to June 30, 1943 and before January 1, 1944. Paragraph 355.4 is added providing that construction contracts and subcontracts entered into subsequent to December 31, 1943, are exempt from renegotiation under subsection (i) (4) of the 1943 Act.

4. Delegation of Authority to Make Permissive Exemptions. Paragraph 357 is rewritten to include a reference to a delegation dated November 10, 1944, by the War Contracts Price Adjustment Board to the Secretaries with respect to patent license agreements. The delegation of November 10, 1944, is set forth at paragraph 821.2.

5. Accelerated Amortization. Subparagraphs (3) and (5) of paragraph 383.2 are rewritten to give effect to Executive Orders 9486 and 9487, as amended, transferring to the Chairman of the War Production Board the authority to issue Certificates of Non-necessity.

6. Patent Royalties as Costs. Subparagraphs (2), (3) and (4) of paragraph 388.1 dealing with this subject have been amended with respect to the effect of Royalty Adjustment Act orders or agreements.

7. Extension of the Termination Date of the Renegotiation Act. At paragraph 808 is printed the Presidential Proclamation dated November 14, 1944, specifying June 30, 1945, as the termination date of the Renegotiation Act.

8. Raw Material Exemptions. The following two products are added to the list of exempted raw materials appearing at paragraph 841:

Barytes, crude crushed.
Ferro carbon titanium.

9. Standard Commercial Article Exemptions. The following products are added to the list of exempted standard commercial articles appearing at paragraph 845:

Quick and hydrated lime.
Dead-burned dolomite.

OVER→

FEDERAL REGISTER

Publication of the Renegotiation Regulations in the Federal Register has occurred up to the date of this revision only as follows:

Issue of Federal Register	*Contents*
Wednesday, April 19, 1944 9 Federal Register 4135	Renegotiation Regulations through Revision 1
Wednesday, June 7, 1944 9 Federal Register 6154	Changes and additions in Renegotiation Regulations contained in Revisions 2 through 6
Saturday, June 24, 1944 9 Federal Register 7020	Changes and additions in Renegotiation Regulations contained in Revision 7
Friday, July 28, 1944 9 Federal Register 9107	Changes and additions in Renegotiation Regulations contained in Revision 8
Tuesday, August 15, 1944 9 Federal Register 9907	Changes and additions in Renegotiation Regulations contained in Revision 9
Tuesday, September 26, 1944 9 Federal Register 11764	Changes and additions in Renegotiation Regulations contained in Revision 10
Thursday, October 26, 1944 9 Federal Register 12845	Changes and additions in Renegotiation Regulations contained in Revision 11
Tuesday, November 21, 1944 9 Federal Register 13858	Changes and additions in Renegotiation Regulations contained in Revision 12

In these filing instructions from time to time will be inserted cumulative references to later publications in the Federal Register.

FILING INSTRUCTIONS

The pages sent with this memorandum are to be included immediately in your Renegotiation Regulations. Changes in the Renegotiation Regulations are made by republishing the particular sheets affected. In case it is found necessary to add new pages in the body of any section because of the insertion of added material, a continuous numbering sequence will be maintained by appropriate use of a capital letter following the page number. For example, if two new pages are inserted between pages 412 and 413, page 412 will be renumbered 411A and the new pages numbered 411B and 412. When old pages are removed, they may be thrown away unless it is desired to preserve them in a separate volume for reference to determine the wording of a paragraph at a given date in the past.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
303—304	303—304	Changes in Table of Contents for Chapter III.
335—336	335—335B	Paragraph 334.3 is rewritten with respect to patent licenses and the effect of Royalty Adjustment Act orders or agreements.
347F—348	347F—348	(1) Subparagraph (5) of paragraph 348.3 requiring an estimate of excessive profits where the recovery is limited by the "floor" is deleted. (2) Subparagraph (6) of paragraph 348.3 is renumbered subparagraph (5).
353—357	353—357	(1) The heading of paragraph 355.3 is amended to make such paragraph applicable to contracts and subcontracts entered into subsequent to June 30, 1943 and before January 1, 1944. (2) Paragraph 355.4 is added providing for the exemption of construction contracts and subcontracts entered into subsequent to December 31, 1943. (3) Paragraph 357 is rewritten to include a reference to a delegation dated November 10, 1944 by the War Contracts Price Adjustment Board to the Secretaries with respect to patent license agreements.

REMOVE OLD PAGES	INSERT NEW PAGES	SUMMARY OF CHANGES
387—387A	387—387A	Subparagraphs (3) and (5) of paragraph 383.2 are rewritten to give effect to the transfer to the Chairman of the War Production Board of the authority to issue Certificates of Non-necessity.
387D—388 (4 pages)	387D—388 (4 pages)	(1) Subparagraphs (2), (3) and (4) of paragraph 388.1 dealing with the allowance of patent royalties as costs are amended. (2) The reference at the end of paragraph 389.1 is amended to read "paragraph" 348.3 (5).
703—704	703—704	Changes in Table of Contents for Chapter VII.
793—794	793—794	At paragraph 793.1 in the address of the Price Adjustment Section of the Quartermaster General, Col. H. F. Colt is substituted for Lt. Col. H. F. Colt.
795B—797D (7 pages)	795B—797D (7 pages)	(1) At paragraph 794.1 the address of the Chicago Division of the Navy Price Adjustment Board is amended. (2) The heading of paragraph 796 is amended to read "Patent Royalty Adjustment Offices." (3) At paragraphs 796.1 to 796.5, inclusive the addresses of the various departmental Patent Royalty Adjustment Offices are inserted.
801—802	801—802	Changes in Table of Contents for Chapter VIII.
839—842 (inclusive)	839—843	(1) Paragraph 808 is added, consisting of the Presidential Proclamation dated November 14, 1944, specifying June 30, 1945, as the termination date of the Renegotiation Act. (2) Paragraph 821.2 is added containing a delegation dated November 10, 1944 to the Secretaries.
845—846	845—846	The following two exempted products are added to paragraph 841: Barytes, crude crushed Ferro carbon titanium.
849—850	849—850	The following products are added to the list of standard commercial article exemptions at paragraph 845: Quick and hydrated lime Dead-burned dolomite.

★When you have filed these pages, place this instruction letter in the back of your binder.

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342.1...Statutory Provision
342.2...Scope of Authority
343...Contracts and Subcontracts with Other Governmental Agencies
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344...Contracts and Subcontracts for Certain Raw Materials and Agricultural Commodities
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344.3...Cost Allowance for Raw Materials and Agricultural Commodities in the Case of Integrated Producers
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344.5...Packaging Materials and Containers
345...Contracts or Subcontracts with Tax-Exempt Charitable, Religious and Educational Institutions
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346...Construction Contracts Awarded as a Result of Competitive Bidding
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333.3 When Machinery, Equipment or Materials "Used in Processing". Under this interpretation machinery, equipment or materials will be deemed to be used in the processing of an end product or an article incorporated in an end product in all cases where such machinery, equipment or materials are used:

(1) to produce or otherwise operate directly on an end product or an article incorporated in an end product by chemical, physical or mechanical methods; such, for example, as shaping, cutting, constructing, combining, refining, assembling, testing, inspecting or (in the case of end products) packaging. Examples of this category include not only such machinery as rolling mills and machine tools, but also gauges and other measuring instruments, torches and chemicals or other materials consumed in the course of the manufacturing process, such for example as hydrogen, oxygen, coke and acetylene;

(2) to transport within the contractor's plant an end product or an article incorporated in an end product or other articles used in connection with the production thereof. Examples of this category include tote boxes, tractors, trucks and traveling cranes;

(3) in connection with the repair, maintenance, equipping, or operation in the contractor's plant of machinery or equipment there used in the production of an end product, or an article incorporated in an end product. Examples of this category include spare parts, auxiliary tools, abrasives, wrenches, screwdrivers, other hand tools, lubricating oil, cutting oil and dry ice; also machine tools or equipment located in the tool room of a contractor's plant and special equipment used for the manufacture, preparation or maintenance of tools, dies, jigs, fixtures, equipment or machinery.

333.4 General Effect of Interpretation.

(1) In general it is intended to include as subject to statutory renegotiation the sale of all machinery, equipment, materials and other articles which contribute directly to the actual production of an end item or an article incorporated therein, in connection with the physical handling of the item from the time of entry of the component materials to departure of the item from the plant in question and to include all machinery which similarly contributed directly to the actual production of other machinery so used. Packaging materials and containers are regarded as a component part of the end product when they are used to package or contain the end product and are delivered with the end product to a Department; on the other hand, sales of packaging materials and containers which are not ultimately delivered to a Department are excluded from statutory renegotiation. (See paragraphs 333.3 (1), 344.5 and 347.2 (1) and (3).)

(2) It is intended to exclude the sale of articles which contribute only indirectly to the actual manufacturing process, such as products used for general plant maintenance, including fuel and equipment to produce light, heat and general power requirements and such as equipment needed for general office maintenance, including all types of office machinery and supplies, and such as safety equipment and clothing.

(3) It is not intended to exclude from renegotiation any articles sold to a contractor when the items are to be ultimately resold to a Department either as end products or as component parts included therein. However, subcontracts to furnish office supplies are specifically excluded from the definition of subcontract. Therefore, subcontracts for office supplies, although such office supplies are ultimately sold to a Department, are not subject to renegotiation. Office supplies are interpreted to include paper, ink, typewriter ribbons, binders, covers, blotters, paper clips, staples and other items of consumable character, as well as related items of relatively short life and minor cost, such as pens, pen holders, pencils, blotter pads and calendars; they do not include office furniture, machinery and equipment, such as desks, chairs, lamps, rugs, waste baskets, filing cases, typewriters and calculating, recording, reproducing and dictating machines.

333.5 **Allocation of Sales.** Sales of such machinery and equipment are allocated on the basis of the use thereof (i.e., for renegotiable or non-renegotiable production); and when the extent of the use can not be readily established, such sales are considered renegotiable in substantially the same proportion as the production of the purchasers of such machinery and equipment is subject to renegotiation. (See Section 2 of Chapter III, including paragraph 322.3.)

334. Specific Interpretations of "Subcontract".

334.1 **Standard Commercial Articles.** The term "standard commercial article" is defined by subsection (a) (7) of the 1943 Act which provides in subsection (i) that agreements for such articles may be exempted by the War Contracts Board under certain conditions. (See paragraph 354.) Unless agreements for standard commercial articles are exempted pursuant to such subsection, their renegotiability will be determined by the same tests applied to agreements for equipment specially fabricated for war uses or purposes.

334.2 **OPA Price Ceilings.** The fact that articles are sold under price ceilings fixed by the Office of Price Administration does not exclude the sale of such articles from renegotiation. Excessive profits have been realized within OPA price ceilings. The increase in volume of sales of such articles may lower costs to such extent that excessive profits are realized.

334.3 **Patent Licenses as Subcontracts.**

(1) Licenses for processes or inventions required in performing contracts with the Departments and subcontracts are subcontracts as defined in subsection (a)(5)(A) of the 1943 Act subject to statutory renegotiation (unless exempted), without regard to the time that the license was made. Such licenses are not subcontracts under subsection (a)(5)(B) of the 1943 Act. In any case where a license and an agreement by the licensor to furnish any technical or other services to the licensee are embraced within a single contract, the agreement to furnish technical or other services may be a subcontract under subsection (a)(5)(B) of the 1943 Act. In any such case, the license may be severed from the agreement to furnish tech-

nical or other services, and an appropriate finding made as to that portion of the consideration payable under the contract which is payable on account of the license and that portion of the consideration which is payable on account of the services.

(2) In any case in which the receipts or accruals of the contractor include or consist of royalties, the renegotiating agency may consult with the Royalty Adjustment Office of the Department or Service concerned before determining whether excessive profits were derived from such royalties. (See paragraph 796 for addresses of such offices).

(3) If the rates or amounts of the royalties received or accrued for the period involved in the renegotiation have been fixed as fair and just in a Royalty Adjustment Act order or agreement applicable to such period or any part thereof, the renegotiating agency will ordinarily find that no excessive profits have been derived from that part of the royalties covered by such order or agreement. Rates or amounts of royalties fixed as fair and just in a Royalty Adjustment Act order or agreement which does not cover all or some part of the period involved in the renegotiation will not be controlling as to the reasonableness of the royalties received or accrued for such period or such part thereof as is not covered by the order or agreement.

334.4 Subcontracts for Office Supplies. The definition of "subcontract" as contained in subsection (a) (5) (A) of the 1943 Act specifically excludes therefrom agreements or purchase orders for office supplies. (Also see paragraph 333.4.)

[The next page is 337.]

"(6) This subsection shall be applicable to all contracts and subcontracts . . . unless (A) the contract or subcontract provides otherwise pursuant to subsection (i) or is exempted under subsection (i) or (B) the aggregate of the amounts received or accrued in such fiscal year by the contractor or subcontractor and all persons under the control of or controlling or under common control with the contractor or subcontractor, under contracts with the Departments and subcontracts (including those described in Clause (A), but excluding subcontracts described in subsection (a) (5) (B)) do not exceed $500,000 and under subcontracts described in subsection (a) (5) (B) do not exceed $25,000 for such fiscal year. If such fiscal year is a fractional part of twelve months, the $500,000 amount and the $25,000 amount shall be reduced to the same fractional part thereof for the purposes of this paragraph."

348.2 Computation of Aggregate Receipts and Accruals.

(1) In order to qualify for this exemption a contractor must meet two conditions—

(a) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from subcontracts within the scope of subsection (a) (5) (B) of the 1943 Act (that is, for services in procuring contracts or subcontracts) must not exceed $25,000; and

(b) The gross receipts or accruals of the contractor and his affiliates for his fiscal year from all contracts with the Departments and from all subcontracts within the scope of subsection (a) (5) (A) of the 1943 Act, including contracts and subcontracts exempt from renegotiation under subsection (i) of the 1943 Act but excluding subcontracts covered in (a) above, must not exceed $500,000.

(2) Affiliate is used in this paragraph 348 to refer to a person who controls or is controlled by or under common control with the contractor. Total receipts or total billings under cost-plus-fixed-fee contracts are included in gross receipts or accruals in computing the limits referred to in this paragraph 348. For the purpose of applying this provision of the Act gross receipts and accruals will be computed without the elimination of inter-company sales.

(3) When the fiscal years of the respective members of the affiliated group differ, the test will be whether, during the twelve months period (or fraction thereof) which is the fiscal year of the member of the group being considered for renegotiation, the group had gross receipts or accruals in excess of the statutory minimum.

(4) If the contractor meets one of the conditions referred to in subdivision (1) hereof but not the other, renegotiation will be conducted only with respect to his contracts and subcontracts as defined in subsection (a) (5) (A) of the 1943 Act or with respect to his subcontracts as defined in subsection (a) (5) (B) of the 1943 Act, as the case may be, as to which the condition is not met.

348.3 **No Reduction by Refund Below Exemption.**

(1) In connection with the renegotiation of contracts and subcontracts (other than subcontracts referred to in subsection (a)(5)(B) of the 1943 Act), no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(b) will reduce them below $500,000.

(2) In connection with the renegotiation of subcontracts referred to in subsection (a)(5)(B) of the 1943 Act, no determination of excessive profits after adjustment for state income taxes shall be made in an amount greater than that which, when deducted from the aggregate amount of gross receipts or accruals referred to in paragraph 348.2(1)(a) will reduce them below $25,000.

(3) In the case of a fiscal year of less than twelve months, ending after June 30, 1943, these rules are applied on a prorated basis.

(4) In the renegotiation of contractors who are subject to renegotiation by reason of the common control provisions of the 1943 Act (see paragraph 348.1) the refund may reduce the aggregate amount of gross receipts or accruals of any member below the floor specified in subdivision (1) or (2) of this paragraph but the aggregate of the recoveries from such contractors after adjustment for state income taxes must not reduce the combined adjusted sales of the contractors below the minimum referred to in this paragraph. In the case of companies renegotiated on a consolidated basis the combined adjusted sales will be computed without the elimination of inter-company sales (see paragraph 348.2(2)).

(5) In applying the provisions of this paragraph 348.3 to any case in which an adjustment for state income taxes is required (see paragraph 389), excessive profits shall first be determined and the appropriate adjustment for state income taxes shall be made without regard to any limitations imposed by this paragraph upon the amount of refund. The limitations of this paragraph shall then be applied in determining the amount to be refunded.

348.4 **Tests of "Control".** In determining whether the contractor controls or is controlled by or under common control with another person, the following principles should be followed:

(1) *Corporate Control*: A parent corporation which owns more than 50% of the voting stock of another corporation controls such other corporation and also controls all corporations controlled by such other corporation.

"(D) any contract or subcontract for the making or furnishing of a standard commercial article, if, in the opinion of the Board, competitive conditions affecting the sale of such article are such as will reasonably protect the Government against excessive prices;"

(2) Subsection (a)(7) of the 1943 Act provides

"(7) The term 'standard commercial article' means an article—

"(A) which is identical in every material respect with an article which was manufactured and sold, and in general civilian, industrial, or commercial use prior to January 1, 1940,

"(B) which is identical in every material respect with an article which is manufactured and sold, as a competitive product, by more than one manufacturer, or which is an article of the same kind and having the same use or uses as an article manufactured and sold, as a competitive product, by more than one manufacturer, and

"(C) for which a maximum price has been established and is in effect under the Emergency Price Control Act of 1942, as amended, or under the Act of October 2, 1942, entitled 'An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes', or which is sold at a price not in excess of the January 1, 1941, selling price.

An article made in whole or in part of substitute materials but otherwise identical in every material respect with the article with which it is compared under subparagraphs (A) and (B) shall be considered as identical in every material respect with such article with which it is so compared."

(3) Subsection (i)(2) of the 1943 Act provides

"(2) The Board is authorized by regulation . . . to interpret and apply the definition contained in subsection (a) (7)."

354.2 Interpretation and Application.

(1) Exemption of standard commercial articles will be made on the basis of "articles" by types or classes and not on the basis of individual contracts or individual contractors. Exemptions will be effective with respect to such date as may be specified in the exemption and will apply to amounts received or accrued or to contracts entered into after the specified date.

(2) Studies made with respect to the existence of excessive profits in the standard commercial article field in connection with the Congressional hearings on the amendments to the Renegotiation Act indicated that the production of standard commercial articles purchased in substantial volume for war purposes had generally resulted in excessive profits on renegotiable business both in 1942 and in 1943. The Congress rejected the suggestion that a basis for exemption existed by reason of the fact a particular article constituted a standard commercial article or was sold under OPA ceiling prices. Furthermore, it

is to be noted that the fact that an individual contractor may not be making excessive profits on such an article is of little significance. The status of the individual contractor is more readily dealt with through renegotiation where he can be given a clearance if after examination it is found that no excessive profits exist in the particular case. Accordingly, in order that useless requests for exemption may be avoided, it should be noted that exemptions under section 403 (i) (4) (D) can only be made where competitive conditions have been such as reasonably to protect the Government against excessive prices and on the basis of broad national conditions and considerations and after complete research and development of the factual and legal questions involved.

(3) For exemptions under the standard commercial article exemption, see paragraph 845.

355. Contracts and Subcontracts When Effective Competition Is Likely to Exist.

355.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(E) any contract or subcontract, if, in the opinion of the Board, competitive conditions affecting the making of such contract or subcontract are such as are likely to result in effective competition with respect to the contract or subcontract price."

355.2 General Interpretation of Exemption. The War Contracts Board will make exemptions under this provision only as to classes or types of contracts on the basis of the subject matter with which the contract or subcontract is concerned. Exemptions by the Board will be based upon broad national conditions and considerations and will be limited to those fields where, in the opinion of the Board, not only do competitive conditions exist, but the competition is such that it may be presumed to be effective in the sense of producing fair and reasonable prices for the Government and in generally eliminating excessive profits.

355.3 Application of Exemption to Construction Contracts and Subcontracts Entered into Subsequent to June 30, 1943 and Before January 1, 1944.

(1) The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to June 30, 1943, were such as to result in effective competition with respect to the contract or subcontract price where all of the following conditions exist,

(a) The contract or subcontract is for the construction of a building, structure, improvement or similar facility. A contract or subcontract will be deemed to be for the construction of a building, structure, improvement or similar facility if the subject matter thereof is the construction or installation of the whole or any integral part of a building, structure, improvement or similar facility. The exemption has, however, no applicability to contracts or subcontracts for the furnishing of materials or supplies, as such, even if such materials or supplies are to be used in the construction of a building, structure,

improvement or similar facility; nor has the exemption any applicability to contracts or subcontracts for the furnishing of machinery or equipment which has or may have a productive function in connection with processing;

(b) the contract or subcontract did not constitute a substitute for or a revision or extension of an existing contract or subcontract entered into on or before June 30, 1943;

(c) the work covered by the contract was substantially the same as the work for which the bids were requested;

(d) bids were received from two or more independent, responsible and qualified bidders in actual competition with each other; and

(e) the contract or subcontract was let to the lowest qualified bidder, at a price not in excess of the low bid;

or where the subcontract is a construction contract which (i) meets the conditions prescribed in subparagraph (a) above, and (ii) is a subcontract under a contract or subcontract exempt from renegotiation under the foregoing provisions of this paragraph 355.3. Accordingly, the War Contracts Price Adjustment Board, in accordance with subsection (i)(4) of the Renegotiation Act, has exempted such contracts and subcontracts from all of the provisions of the Act.

(2) In distinguishing a contract or subcontract for the construction of a building, structure, improvement or facility from a contract or subcontract for the furnishing or installation of machinery or equipment, the principles of paragraph 346.2(2) will be followed.

(3) If a construction contract or subcontract is exempt from renegotiation under the provisions of this paragraph 355.3, all modifying instruments thereto providing for additional or different construction of buildings, structures, improvements or similar facilities at or adjacent to the site of the original project are considered a part of the original construction contract or subcontract and therefore are exempt from renegotiation provided, however, that the aggregate contract prices of all such modifying instruments do not exceed one-third of the contract price of the original construction contract or subcontract.

(4) Determination whether this exemption is applicable to any particular prime contract shall be made, upon the basis of the principles referred to in the preceding subdivisions of this paragraph, by the renegotiation agency of the Department or Service conducting the renegotiation in which such prime contract is involved. The renegotiation agency of each Department or Service shall maintain a central file with respect to determinations made by it as to the exempt or non-exempt status of prime contracts. In any case in which the renegotiable status of a construction subcontract is dependent upon the applicability or nonapplicability of the provisions of this paragraph 355.3 to a prime contract, the procedure to be followed shall be the same as is provided in paragraph 347.2(2). If the exempt or non-exempt status of a construction subcontract is not dependent upon the status of a prime contract, then the renegotiation agency of the Department or Service conducting the renegotiation in which such subcontract is involved shall determine the exempt or non-exempt status of such subcontract.

355.4 Application of Exemption to Construction Contracts and Subcontracts Entered into Subsequent to December 31, 1943.

The War Contracts Board has found that competitive conditions affecting the making of construction contracts and subcontracts entered into subsequent to December 31, 1943, were such as to result in effective competition with respect to the contract or subcontract price, and accordingly, the Board, in accordance with subsection (i) (4) of the 1943 Act, has exempted such contracts and subcontracts from all of the provisions of the 1943 Act. The term "construction contracts and subcontracts" as used herein shall be construed in accordance with the principles set forth in subparagraphs (1) (a) and (2) of paragraph 355.3.

356. Subcontracts as to Which It Is Not Administratively Feasible to Determine and Segregate Profits.

356.1 Statutory Authority. Subsection (i)(4) of the 1943 Act authorizes the War Contracts Price Adjustment Board, in its discretion, to exempt from some or all of the provisions of the Act

> "(F) any subcontract or group of subcontracts not otherwise exempt from the provisions of this section, if, in the opinion of the Board, it is not administratively feasible in the case of such subcontract or in the case of such group of subcontracts to determine and segregate the profits attributable to such subcontract or group of subcontracts from the profits attributable to activities not subject to renegotiation."

356.2 Exemption. (1) The War Contracts Board has found that it is not administratively feasible to determine and segregate the profits attributable to activities subject to renegotiation from those not so subject in the case of the following subcontracts:

(a) Subcontracts directly or indirectly under a prime contract to which the provisions of paragraph 346.2 are applicable as to only a portion of the amounts received or accrued therefrom, due to the fact that a portion of such amounts were received or accrued in a fiscal year ending prior to July 1, 1943;

(b) Subcontracts directly or indirectly under any modifying instrument of the general type described in paragraph 346.2(3) (regardless of whether such modifying instrument is exempted under that paragraph) which modifies a contract to which the provisions of paragraph 346.2 are applicable; and

(c) Subcontracts for the construction of a building, structure, improvement or other similar facility directly or indirectly under any modifying instrument of the general type described in paragraph 355.3(3) (regardless of whether such modifying instrument is exempted from renegotiation under paragraph 355.3).

The War Contracts Board has therefore exempted the foregoing subcontracts from all the provisions of the 1943 Act.

(2) Since the powers of the War Contracts Board under subsection (i)(4)(F) (paragraph 356.1) are applicable only to amounts received or accrued for fiscal years ending after June 30, 1943, the exemptions made by this paragraph 356.2 are applicable only to

amounts received or accrued under such subcontracts for fiscal years ending after June 30, 1943.

(3) In determining whether a subcontract is one for the construction of a building, structure, improvement or other similar facility, the principles of paragraph 346.2 shall be applied.

356.3 **Cross reference.** For an exemption of subcontracts under certain public utility contracts, see paragraph 842.6.

357. Delegation of Authority to Make Permissive Exemptions.

(1) The authority to make exemptions of contracts or subcontracts under subsection (i) (4) of the 1943 Act by general classes or types has not been delegated by the War Contracts Board to each Secretary except as referred to in subparagraph (2). The War Contracts Board has, however, delegated to each Secretary authority to make exemptions under this subsection of individual contracts entered into pursuant to his authority, and subcontracts under any such contracts (whether or not such subcontracts are also subcontracts under prime contracts with other Departments).

(2) With respect to patent license agreements, more general authority has been delegated to each Secretary. (See paragraph 821.2).

(3) Such delegations of authority, however, must be exercised in accordance with interpretations of the 1943 Act and regulations relating thereto issued by the War Contracts Board. Also, subject to interpretations and regulations of the War Contracts Board, the Secretary to whom an assignment for renegotiation is made has authority to interpret and apply exemptions under subsection (i) (4) of the 1943 Act. The Secretaries have been given full power to redelegate this authority and to authorize further redelegations. (See paragraphs 821.1 and 821.2).

358. Requests for Exemption. All requests or petitions for the exemption by general classes or types of contracts and subcontracts for a standard commercial article or of contracts or subcontracts where it is claimed there is "effective competition" or of other general classes or types of contracts under subsection (i) (4) of the 1943 Act should be made in writing in triplicate and addressed to the War Contracts Price Adjustment Board at the address specified in paragraph 791.5, and should be supported by a full statement of facts setting forth the basis for the requested exemption.

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383. Amortization and Depreciation.

383.1 Allocation.

(1) General depreciation, maintenance and other such charges should be allocated between renegotiable and non-renegotiable business according to the principles established in 381.4.

(2) Where stand-by facilities are customary or necessary to a particular type of business, the cost of depreciation, maintenance, etc. should be allocated between renegotiable and non-renegotiable business according to the principles established in 381.4.

(3) Statutory amortization on facilities covered by certificates of necessity should be allocated between renegotiable and non-renegotiable business according to the principles established in 381.4, giving consideration, however, to the basis of original issuance of such certificates where the facilities are not in active use.

(4) Depreciation and maintenance charges on properties which are not in use but which are being maintained in an idle status pursuant to written request of an authorized official of a Department may be allocated as a charge against renegotiable business.

383.2 Accelerated Amortization and Renegotiation Rebate.

(1) Under Section 124 of the Internal Revenue Code, a contractor who has acquired or constructed with his own funds facilities especially adapted for use in war production may, upon securing a Certificate of Necessity, amortize their cost over a five-year period, at the rate of 20 per cent per year. Prior to December 17, 1943, the Secretary of War and the Secretary of the Navy were by such statute authorized to act upon applications for Certificates of Necessity. Under Executive Order No. 9406, dated December 17, 1943, as amended by Executive Order No. 9429, dated March 2, 1944, this authority (except with reference to certain pending applications) was transferred to the War Production Board. The Facilities Bureau of the War Production Board will pass upon requests for such Certificates made after December 17, 1943.

(2) Amortization so allowed at the rate of 20 per cent per year under Section 124 of the Internal Revenue Code shall be allowed as an item of cost for purposes of renegotiation, to the extent it is properly allocable to renegotiable business.

(3) If the emergency is terminated during the five year period, or if the Chairman of the War Production Board pursuant to Executive Orders 9486 and 9487, each dated September 30, 1944, certifies that an emergency facility ceases to be necessary for national defense, the amortization period may for Federal tax purposes be shortened accordingly, and the contractor will be entitled to adjust his taxes for prior years, on the conditions stated in the Internal Revenue Code, to give effect to the corresponding increase in the deduction taken in each such year. Executive Order 9487 has been amended in a minor respect by Executive Order 9490.

(4) Under subsection (a)(4)(C) of the 1943 Act, no allowance as an item of cost in renegotiation shall be made on account of the

increased amortization deduction referred to in the preceding subparagraph (3) unless the computation thereof is made by the Bureau of Internal Revenue, in connection with an adjustment of taxes pursuant to Section 124 (d) of the Internal Revenue Code, before the renegotiation is concluded. The Department shall not, however, permit the absence of such a recomputation of the amortization deduction to be a cause for postponing closing a renegotiation agreement.

(5) Subsection (a) (4) (D) of the 1943 Act provides for payment of a renegotiation rebate to the contractor in those cases where the increased amortization deduction for a prior tax year is so computed by the Bureau of Internal Revenue after the determination of excessive profits has been made by agreement or order. No computation of the increased amortization deduction incident to the tax adjustment above referred to can be made until the Chairman of the War Production Board has issued a Non-Necessity Certificate to the effect that the emergency facility has ceased to be necessary in the interest of national defense during the emergency period.

383.3 **Depreciation.**

(1) War facilities not covered by Certificates of Necessity, representing permanent capital additions for the manufacture of war products or materials, are depreciated in accordance with the provisions of the Internal Revenue Code and will be depreciated in renegotiation, at the ordinary rates of depreciation for corresponding property.

(2) A Department conducting a renegotiation may allow depreciation on machinery and equipment at higher than ordinary rates when, because of its use for extraordinary consecutive periods of day and night shifts, or other circumstances, it is concluded that such higher rates would be allowable under the Internal Revenue Code.

384. **Conversion to War Production.** The full amount of costs of converting facilities to war production which do not represent permanent additions, such as rearrangement of machinery, is allowed by the Bureau, and will be allowed in renegotiation, for the year in which it is incurred to the extent allocable to renegotiable business. This does not include losses on commercial inventory which has become unsaleable as a result of wartime regulations or loss of market, for such losses are not properly allocable to renegotiable business.

385. **Losses.**

385.1 **Costs or Losses on Non-War Ventures.** Losses and costs incurred in connection with business activities or ventures not connected with renegotiable business will be charged against such business activities or ventures and not to renegotiable business.

385.2 **War Losses.** Section 127 of the Internal Revenue Code provides that the amount of the loss on account of property destroyed or seized on or after December 7, 1941, in the course of military or naval operations by the United States or any other country engaged in the present war may be allowed as a deduction from income in the year in which such destruction or seizure occurs. The fact that the property has been destroyed or seized in the course of the war does not of itself, however, establish that the loss is properly allocable to

(2) An order under the Royalty Adjustment Act fixing the rates and amounts of royalties to be paid under a license agreement has no legal effect retroactively. The order applies only to royalties, irrespective of when payable, which are unpaid to the licensor on the effective date of the notice under the statute, whether accruing before or after the effective date of the notice, and does not and cannot require the refund of any royalties which have been paid to the licensor prior to said effective date.

(3) In determining excessive profits of a licensee upon renegotiation for a period in which royalty accruals are covered by an order or agreement under the Royalty Adjustment Act, the renegotiating agency will give full effect to the rates or amounts of royalties fixed in the Royalty Adjustment Act order or agreement as fair and just under the conditions of wartime production. No allowance will be made in renegotiation for royalties paid or accruing during that period in excess of the amounts permitted or provided to be paid under such order or agreement. With respect to renegotiation with a licensor, see paragraph 334.3.

(4) Rates or amounts of royalties fixed as fair and just in a Royalty Adjustment Act order or agreement which does not cover all or some part of the period involved in the renegotiation will not be controlling as to the reasonableness of the royalties paid or accrued by the licensee for such period or such part thereof as is not covered by the order or agreement. In such a case as well as in one where no action under the Royalty Adjustment Act is involved, the renegotiating Department will estimate the amount of the royalties allowable as a deduction for Federal income tax purposes. Ordinarily the licensee will be allowed to include in his costs royalties properly allocable to renegotiable business provided they are actually paid to the licensor prior to the service of a notice in any royalty adjustment proceedings. However, an amount paid pursuant to an arrangement not entered into at arm's length or without a full disclosure of interest, or in bad faith, should be disallowed as an item of cost if it is not an "ordinary and necessary" business expense within the meaning of section 23(a) of the Internal Revenue Code. Particular attention should be given to any relationship or affiliation to the licensor; for example where the licensor was a partner, officer or director of the licensee; or where any partner, officer or director of the licensee participated in the royalties paid to the licensor.

(5) In determining excessive profits of a licensor under the renegotiation statute, where the licensor sells the patented article in competition with like articles sold by others under license from the licensor, the licensor will not include in his costs any development charges except such amortization and development expenses as, it is estimated, are allowable as deductions under the Internal Revenue Code, even though the obligation to pay the royalties requires his licensees to charge a higher price for the competing product.

(6) No royalties paid or incurred by a licensee and no amortization or development expense charged by a licensor will be allocated as a cost in determining excessive profits under the renegotiation statute, whether or not allowable as a deduction under the Internal

Revenue Code, unless such payments or charges are allocable to the sales made under contracts subject to renegotiation. In deciding this question as to any particular patent, the Departments should consider the extent to which the products sold involve the use of the invention or inventions covered by the patent, and as a general rule it should appear that the patent has not expired, that no final adjudication has been made by a court of competent jurisdiction holding the patent invalid, and that it is not in fact the property of the licensee.

388.2 **Corporate Charitable Contributions.** Contributions of the character described in Section 23 (q) of the Internal Revenue Code by a corporation will, to the extent allocable, be allowed as an expense against renegotiable business if such contributions are allowable as deductions in the fiscal year concerned for Federal income tax purposes under Section 23 (q).

388.3 **Cost Allowance in Connection with Raw Materials.** Reference is made to paragraphs 344.3 and 344.4 for a discussion of the non-renegotiable nature of certain excess raw material inventory and the allowance to be made for the value of exempt raw materials.

389. **State Income Taxes.**

389.1 **In General.** Under subsection (a) (4) (B) of the 1943 Act, taxes measured by income cannot be allowed as items of cost for purposes of renegotiation. However, this subsection provides specifically that in determining the amount of excessive profits to be eliminated, proper adjustment shall be made on account of the taxes measured by income (other than Federal taxes) so excluded, which are attributable to non-excessive renegotiable profits. The amount of any such adjustment will in no case exceed that part of such taxes actually payable which is payable because of the inclusion in income of the non-excessive renegotiable profits. The term "taxes measured by income" is interpreted to mean taxes which vary in accordance with the amount of net income of the taxpayer. Such term does not include taxes imposed upon or measured by gross income, gross receipts or sales. Such taxes measured by net income are herein referred to generally as "state income taxes" although actually they may not be designated as "income taxes" in the legislation imposing such taxes, and although they may be imposed by political sub-divisions other than a state. For the effect of the floor provision limiting refunds of excessive profits, see paragraph 348.3(5).

389.2 **Adjustment for State Tax Imposed at a "Flat Rate".**

(1) The amount of unadjusted excessive profits, without consideration of any state income tax, is first determined. This amount is then deducted from renegotiable profits to obtain the amount of non-excessive renegotiable profits. The state income tax attributable to such non-excessive renegotiable profits is computed and this amount is deducted from the unadjusted excessive profits. The remainder constitutes the excessive profits to be eliminated, subject of course to any Federal tax credit to which the contractor may be entitled under Section

3806 of the Internal Revenue Code. (See paragraph 440 and following.) If the contractor has a loss on non-renegotiable business, the unadjusted excessive profits will be deducted from the total profits (including renegotiable and non-renegotiable business) to obtain the tentative retained profits. The tax attributable to the non-excessive renegotiable profits will then be the amount of tax computed on such tentative retained profits.

(2) The general method of calculation is illustrated by the example set forth in the reports of the House Committee on Ways and Means and the Senate Committee on Finance in dealing with subsection (a) (4) (B) of the 1943 Act;

> "For example, if the amount due on a contract is $1,000 and the cost is $800, the profit before adjustment for such tax is $200. Suppose that of the $200 profit, $90 is considered excessive before adjustment for the State tax. If in such case the State income tax on the remaining $110 is $11, then the $11 is to be applied against the $90, reducing to $79 the amount of excessive profits to be eliminated."

(3) The amount of unadjusted excessive profits (i. e. before the adjustment for state income tax) will be a "rounded" figure, but after the tax attributable to the non-excessive renegotiable profits has been ascertained, there will be no "rounding-off" in deducting such amount from the unadjusted excessive profits to obtain the final amount of excessive profits to be eliminated.

389.3 **Adjustment for Graduated State Tax.** If the state income tax is imposed at graduated rates as distinguished from a "flat rate", the adjustment is to be made as follows:

(1) The contractor's total profits subject to the state tax, including non-renegotiable and renegotiable profits, is determined. The unadjusted excessive profits are deducted from such total profits to obtain the contractor's tentative retained profits. The unadjusted excessive profits are also deducted from the renegotiable profits to obtain the non-excessive renegotiable profits.

(2) The state tax on the tentative retained profits is computed as though such profits were the only profits of the contractor.

(3) The tax attributable to the non-excessive renegotiable profits will then be the amount which bears the same ratio to the tax computed in sub-paragraph (2) above as the amount of non-excessive renegotiable profits bears to the tentative retained profits.

(4) The tax attributable to the non-excessive renegotiable profits computed in sub-paragraph (3) is deducted from the unadjusted excessive profits to obtain the amount of excessive profits to be eliminated.

(5) If the contractor has a loss on non-renegotiable business, the tax attributable to the non-excessive renegotiable profits will be the amount of tax computed on the tentative retained profits determined as provided in subparagraph (1) above.

389.4 **Multiple State Income Taxes.** If the contractor is doing business in more than one state, he may be subject to more than

one income tax. In such event, the adjustment should be made by an accurate determination of the tax attributable to the non-excessive renegotiable profits imposed by each state, if such a computation is feasible. If an exact computation is not feasible, the adjustment should be made upon the best estimate of the renegotiating agency and the contractor, made in good faith and with reasonable care. This estimate may take the form of a pro-rata application to each state of the non-excessive renegotiable profits based upon the profits before renegotiation attributable to each state, if no more accurate method is available. If all such taxes are imposed at flat rates, a composite rate may be obtained by dividing total State income taxes by total profits, and this composite rate may be applied to the non-excessive renegotiable profits.

389.5 State Income Tax Measured by Income for Preceding Year. In some states, the tax is measured by the income for the year subject to renegotiation but is a liability of the contractor not for such year but for the next succeeding year. In this event, the adjustment for such tax will be made as though such tax measured by the income subject to renegotiation were in fact a liability for the year subject to renegotiation.

389.6 Adjustment for State Income Tax of Contractor Operating as a Partnership or Sole Proprietorship.

(1) A contractor doing business as a partnership or sole proprietorship is entitled to an adjustment for state income tax based upon the tax liability of the individual partners or of the proprietor. In general, the same procedure will be followed as stated above. Thus, in the case of a partnership, adjustment will be made for the aggregate of the state taxes attributable to each partner's share of non-excessive renegotiable profits.

(2) Normally the state income tax is imposed upon individuals on a graduated basis. Reference is therefore made to paragraph 389.3.

(3) If a contractor is a partnership or sole proprietorship and is subjected to an unincorporated business tax measured by income, adjustment must be made therefor as well as for the state income taxes of the partners or the proprietor.

(4) If a so-called "salary allowance" is made in renegotiation for the services of partners or proprietors, the amount of such "salary" allowed to each partner or to the proprietor will be deducted from the partner's or proprietor's share of the non-excessive renegotiable profits before calculation of the state income tax attributable to such non-excessive renegotiable profits. Such "salary allowance" will also be deducted before calculating any such unincorporated business tax adjustment.

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Treasury Department Price Adjustment Board
Attention: Captain H. C. Maull, Jr., Chairman
5304 Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.

Tel. District 5700
Ext. 2105

Maritime Commission Price Adjustment Board
Attention: Mr. A. G. Rydstrom
Room 512, Electrical Workers Building
1200 15th Street, N. W.
Washington 5 D. C.

Tel. Executive 3340
Ext. 606 or 607

War Shipping Administration Price Adjustment Board
Attention: Mr. James L. Murphy, Chairman
39 Broadway
New York 6, New York

Tel. Whitehall 3-8000

Reconstruction Finance Corporation Price Adjustment Board
Attention: Mr. Charles T. Fisher, Jr., Chairman
Lafayette Building, 811 Vermont Avenue, N. W.
Washington 25, D. C.

Tel. Executive 3111
Ext. 8 or 48

793. War Department Price Adjustment Sections.

793.1 Headquarters.

Price Adjustment Branch
Control Office
AC/AS M. & S., Army Air Forces
Room 5C 964, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Exts. 72209
4420
4577

Price Adjustment Office
Materiel Command, Army Air Forces
Wright Field
Dayton, Ohio

Tel. Kenmore 7111
Exts. 22135
23292
25225

The Chief of Chemical Warfare
Attention: Lt. Col. Robert M. Estes
Purchase Policies Branch
Baltimore Sub-Office, OC CWS
200 West Baltimore Street
Baltimore 1, Maryland
Tel. Lexington 0710

The Chief of Engineers
Attention: Mr. H. W. Loving
Price Adjustment Section
Room 5160, New War Department Building
Washington 25, D. C.
Tel. Republic 6700
Ext. 76225

The Chief of Ordnance
Attention: Lt. Col. John M. Marble
Price Adjustment Branch
Room 5D 400, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2283

The Quartermaster General
Attention: Col. H. F. Colt
Price Adjustment Section
Room 2327, Tempo. B.,
2nd and Q Streets, S. W.
Washington 25, D. C.
Tel. Republic 6700
Ext. 3744 or 6485

The Chief Signal Officer
Attention: Mr. Wilfred Goodwyn
Price Adjustment Section
Room 2C 285, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 73278

The Surgeon General
Attention: Lt. Col. Lee I. Park
Renegotiation Division
Room 518, Maritime Building
1818 H Street, N .W.
Washington 25, D. C.
Tel. Republic 6700
Ext. 78455

The Chief of Transportation
Attention: Col. James F. Mitchell, Jr.
Price Adjustment Section
Room 3A 670, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 4505

(5) *Signal Corps:*

1 North La Salle Street, Chicago 2, Illinois,
Tel. State 9150.

17th and Sansom Streets, Architects Building, Philadelphia 3, Pennsylvania,
Tel. Rittenhouse 5950.

(6) *Surgeon General:*

52 Broadway, New York 4, New York,
Tel. Hanover 2-5200.

Room 1425, Civic Opera Building, 20 North Wacker Drive, Chicago 6, Illinois,
Tel. Randolph 1311.

794. Navy Department.

794.1 Navy Price Adjustment Board.

(1) Washington Division
718 18th Street, N. W.
Washington 25, D. C.
Tel. Republic 7400,
Ext. 62729.

(2) New York Division
Room 310, 630 Fifth Avenue
New York 20, New York.
Tel. Columbus 5-3851.

(3) Chicago Division
12th Floor
7 South Dearborn Street
Chicago 3, Illinois.
Tel. Andover 5740.

(4) San Francisco Division
727 Financial Center Building
405 Montgomery Street
San Francisco 4, California.
Tel. Exbrook 1161.

794.2 Services and Sales Renegotiation Section.

(1) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Washington Divisional Office
Washington 25, D. C.
Tel. Republic 7400.
Ext. 61263.

(2) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
New York Divisional Office
Room 310, 630 Fifth Avenue
New York 20, New York
Tel. Columbus 53851.

(3) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Chicago Divisional Office
Room 803-811, U. S. Custom House
610 South Canal Street
Chicago 7, Illinois
Tel. Wabash 3860

(4) Office of the General Counsel, Navy Department
Services and Sales Renegotiation Section
Los Angeles Divisional Office
Room 907, Van Nuys Building
Seventh and Spring Streets
Los Angeles 14, California
Tel. Tucker 1351

794.3 **Price Revision Division.**

Price Revision Division, PM320
Office of Procurement and Material
Main Navy Building, Room 2234
Washington 25, D. C.
Tel. Republic 7400.
Ext. 63009.

795. **Related Offices.**

General Accounting Office
Washington 25, D. C.
Tel. Executive 4621.

Chief, Contract Review Branch
Procurement Policy Division
War Production Board, Department 1400
4th & Independence Avenue, S. W.
Washington 25, D. C.
Tel. Republic 7500.
Ext. 71783.

796. **Patent Royalty Adjustment Offices.**

796.1 **War Department Patent Royalty Adjustment Offices.**

Patent Counsel
Legal Branch, Office, Director of Materiel
Headquarters, Army Service Forces
Room 5C 683, The Pentagon
Washington 25, D. C.
Tel. Republic 6700
Ext. 2553

Chairman, Royalty Adjustment Board
Army Air Forces Materiel Command
Wright Field
Dayton, Ohio
Tel. Kenmore 7111
Ext. 25222

Chief, Legal Division
Office of the Chief of Transportation
Room 3A 724, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3556

Chief, Contracts and Claims Branch
Office of the Chief of Engineers
Room 3213, New War Department Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 78253

Chief, Patent Section, Legal Branch
Office of the Chief of Ordnance
Room 4E 330, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 2748

Patents and Inventions Counsel, Legal Division
Office of the Chief Signal Officer
Room 4D 331, The Pentagon
Washington 25, D. C.

Tel. Republic 6700
Ext. 3702

Chief, Patent Section, Legal Branch
Office of the Chief of the Chemical Warfare Service
Room 1007, T-7
Gravelly Point
Virginia

Tel. Republic 6700
Ext. 2826

Chief, Patent Section, Legal Branch
Office of the Quartermaster General
Room 2442, Tempo B
Washington 25, D. C.

Tel. Republic 6700
Ext. 4294

The Patent Representative
Office of the Surgeon General
Room 419, Maritime Building
Washington 25, D. C.

Tel. Republic 6700
Ext. 79369

796.2 Navy Department Patent Royalty Adjustment Office.
Office of Patents and Inventions
Navy Department
Washington 25, D. C.

Tel. Republic 7400
Ext. 61565

796.3 **Treasury Department Patent Royalty Adjustment Office.**

Assistant to the Director
Treasury Department
Room 7002, Procurement Building
7th and D Streets, S. W.
Washington 25, D. C.
Tel. District 5700
Ext. 600 or 635

796.4 **Maritime Commission Patent Royalty Adjustment Office.**

Patent Counsel, Legal Division
U. S. Maritime Commission
Room 5709
Department of Commerce Building
Washington 25, D. C.
Tel. Executive 3340
Ext. 959

796.5 **Reconstruction Finance Corporation Patent Royalty Adjustment Office.**

General Counsel, Price Adjustment Board
Reconstruction Finance Corporation
Room 947, Lafayette Building
811 Vermont Avenue, N. W.
Washington 25, D. C.
Tel. Executive 3111
Ext. 181

797. **Reconstruction Finance Corporation Price Adjustment Sections.**

797.1 **Headquarters.**

Reconstruction Finance Corporation
Price Adjustment Board
Lafayette Building,
811 Vermont Avenue, N. W.
Washington 25, D. C.
Tel. Executive 3111
Ext. 8 or 48

797.2 **Field Offices of Price Adjustment Sections.**

Healey Building, Atlanta 3, Georgia,
Tel. Main 5612

Comer Building, Birmingham 3, Alabama,
Tel. Birmingham 4-2661

40 Broad Street, Boston 9, Massachusetts,
Tel. Capitol 4070

Wilson Building, 109 West Third Street, Charlotte 1, N. C.,
Tel. Charlotte 3-7161

208 S. LaSalle Street, Chicago 4, Illinois,
Tel. State 0800

Federal Reserve Bank Building, Cleveland 1, Ohio,
Tel. Main 8515
Night, Main 8518

Cotton Exchange Building, Dallas 1, Texas,
Tel. LD 171 or
Riverside 6751

Boston Building, Denver 2, Colorado,
Tel. Alpine 0415

607 Shelby Street, Detroit 26, Michigan,
Tel. Cherry 8300

P. O. Box 177, Power Block, Helena, Montana,
Tel. Helena 481

Rusk Building, 723 Main Street, Houston 2, Texas,
Tel. Charter 4-6711

Western Union Building, Jacksonville 2, Florida,
Tel. Jacksonville 5-1650

Federal Reserve Bank Building, Kansas City 6, Missouri,
Tel. Victor 3113

Pyramid Building, Little Rock, Arkansas,
Tel. Little Rock 4-0254

Pacific Mutual Building, Los Angeles 14, California,
Tel. Michigan 6321

Lincoln Bank Building, 421 W. Market Street,
Louisville 2, Kentucky,
Tel. Wabash 6771

McKnight Building, Minneapolis 1, Minnesota,
Tel. Geneva 8601

Nashville Trust Company Building, Union Street,
Nashville 3, Tennessee,
Tel. LD 48 or 5-2182

Union Building, 837 Gravier Street, New Orleans 12,
Louisiana,
Tel. Canal 2701

Federal Reserve Bank Bldg., 33 Liberty Street, New
York 5, N. Y.,
Tel. Rector 2-8100

Cotton Exchange Building, Oklahoma City 2, Oklahoma,
Tel. LD 647 or 2-8541

Woodmen of the World Bldg., Omaha 2, Nebraska,
Tel. Jackson 8200

1528 Walnut Street, Philadelphia 2, Pennsylvania,
Tel. Kingsley 1500

Pittock Block, Portland 5, Oregon,
Tel. Atwater 6401

Richmond Trust Building, 7th and Main Streets, Richmond 19, Virginia,
Tel. Richmond 3-6741

Landreth Building, 320 N. Fourth Street, St. Louis 2, Missouri,
Tel. Garfield 3750

Dooly Building, Salt Lake City 1, Utah,
Tel. Salt Lake City 5-7493

Alamo National Building, San Antonio 5, Texas,
Tel. Cathedral 1461

200 Bush Street, San Francisco 4, California,
Tel. Exbrook 6206

Dexter Horton Building, Seattle 4, Washington,
Tel. Main 1080

Columbia Building, Spokane 8, Washington,
Tel. Main 5111

798. War Department Power Procurement Officer.

798.1 Headquarters.

Utilities Price Adjustment Section,
Office, Chief of Engineers,
Attention: Major George P. Steinmetz, Chief,
5004 New War Department Building,
Washington 25, D. C.
Tel. Republic 6700
Ext. 79994 or 76210

798.2 Field Offices.

Commanding General, First Service Command,
Office, Service Command Engineer,
Attention: Mr. W. K. Lewellen,
808 Commonwealth Avenue,
Boston 15, Massachusetts.
Tel. Beacon 1300
Ext. 430

Commanding General, Second Service Command,
Office, Service Command Engineer,
Attention: Major N. H. Davidson,
270 Broadway,
New York 7, New York.
Tel. Barclay 7-1616

Commanding General, Third Service Command,
Office, Service Command Engineer,
Attention: Mr. H. C. Fleming,
101 East Fayette Street,
Baltimore 2, Maryland.
Tel. Plaza 8060

Commanding General, Fourth Service Command,
Office, Service Command Engineer,
Attention: Major R. B. Lapsley,
P. O. Box 4114,
Atlanta, Georgia.

Tel. Jackson 6180
Ext. 85

Commanding General, Fifth Service Command,
Office, Service Command Engineer,
Attention: Major L. F. Dabe,
Building 62, Fort Hayes,
Columbus 18, Ohio.

Tel. Columbus 2171
Ext. 635

Commanding General, Sixth Service Command,
Office, Service Command Engineer,
Attention: Capt. V. A. Thieman,
20 No. Wacker Drive,
Chicago, Illinois.

Tel. Randolph 1311

Commanding General, Seventh Service Command,
Office, Service Command Engineer,
Attention: Major R. H. Bradford,
Federal Building, 15th & Dodge Streets,
Omaha, Nebraska.

Tel. Jackson 7900
Ext. 233

Commanding General, Eighth Service Command.
Office, Service Command Engineer,
Attention: Major D. W. Reeves,
Santa Fe Building,
Dallas 2, Texas.

Tel. LD 930
Ext. 771

Commanding General, Ninth Service Command,
Office, Service Command Engineer,
Attention: Major W. C. Sadler,
Fort Douglas, Utah.

Tel. Fort Douglas 5-6611

799. War Shipping Administration.

799.1 War Shipping Administration Price Adjustment Board.

(1) New York Division
39 Broadway
New York 6, New York.

Tel. Whitehall 3-8000

(2) Pacific Coast Division
427 Mills Tower Building
220 Bush Street
San Francisco 4, California.

Tel. Garfield 3715

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CHAPTER VIII

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(*e*) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation, the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the errors alleged.

(*f*) A prayer, setting forth relief sought by the petitioner.

(*g*) The signature of the petitioner or that of hs counsel. (See Rule 4.)

(*h*) A verification by the petitioner in accordance with the applicable provision of subsection (h) of Rule 6.

(*i*) A copy of the order of the Board or of the Secretary, as the case may be, determining the amount of excessive profits, which order forms the basis for the initiation of the proceeding, shall be appended to the petition. If a statement has been furnished to the petitioner by the Board or the Secretary setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

III. Any Claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under Rule 14, or in an amendment thereto filed under Rule 17 at or before the time of the hearing.

IV. With respect to the matter covered by Rule 60, attention is directed to section 403 (e) (1) of the Renegotiation Act.

807. Legal Rate of Interest in Absence of Agreement—District of Columbia. "The rate of interest in the District upon the loan or forbearance of any money, goods, or things in action, and the rate to be allowed in judgments and decrees, in the absence of express contract as to such rate of interest, shall be six dollars upon one hundred dollars for one year, and at that rate for a greater or less sum or for a longer or shorter time: Provided, That interest, when authorized by law, on judgments against the District of Columbia, shall be at the rate of not exceeding 4 per centum per annum." (Mar. 3, 1901, 31 Stat. 1377, ch. 854, 1178; July 1, 1902, 32 Stat. 610, ch. 1352.) (See D. C. Code Sec. 28-2701.)

808. Proclamation 2631 Specifying June 30, 1945, as the Termination Date of the Renegotiation Act.

Proclamation 2631

Specification of the Termination Date as Provided in the Renegotiation Act by the President of the United States of America

A Proclamation

WHEREAS subsection (h) of the Renegotiation Act (section 403, as amended, of the Sixth Supplemental National Defense Appropriation Act, 1942, approved April 28, 1942 (56 Stat. 226, 245), as amended by section 701 of the Revenue Act of 1943, enacted February 25, 1944 (58 Stat. 26, 78)), provides in part:

This section shall apply only with respect to profits derived from contracts with the Departments and subcontracts which are attributable to performance prior to the termination date. For the purposes of this subsection—

* * * * *

(2) The term "termination date" means—

(A) December 31, 1944; or

(B) If the President not later than December 1, 1944, finds and by proclamation declares that competitive conditions have not been restored, such date not later than June 30, 1945, as may be specified by the President in such proclamation as the termination date

* * * * *

except that in no event shall the termination date extend beyond the date proclaimed by the President as the date of termination of hostilities in the present war, or the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, whichever is the earlier.;

AND WHEREAS hostilities in the present war have not terminated and the continued necessity of devoting a very large proportion of the production of the nation to the successful prosecution of the present war has prevented the restoration of competitive conditions:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by the statutory provisions above set out, (1) do hereby find and declare that competitive conditions have not been restored; and (2) do hereby specify June 30, 1945, as the termination date within the meaning of subsection (h) of the Renegotiation Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this 14th day of November in the year of our Lord nineteen hundred and forty four, and of the Independence of the United States of America the one hundred and sixty ninth.

FRANKLIN D. ROOSEVELT

By the President:

E. R. STETTINIUS, Jr.,
Acting Secretary of State.

[F. R. Doc. 44-17571; Filed, Nov. 16, 1944; 11:45 a. m.]

Section 2

DELEGATIONS OF AUTHORITY

821. Delegations from War Contracts Price Adjustment Board.

821.1 Delegation Dated February 26, 1944, to the Secretaries.

Delegation by the War Contracts Price Adjustment Board of Powers, Functions and Duties under the Renegotiation Act

February 26, 1944

1. For the purpose of this delegation, the terms "Board," "Department" and "Secretary" shall have the same meaning as when used in the Renegotiation Act (hereinafter referred to as "the Act").

2. Pursuant to the provisions of subsection (d)(4) of the Act, the Board hereby delegates to each Secretary:

(a) All of the powers, functions and duties conferred upon the Board by subsections (a)(4)(B); (a)(4)(C); (a)(4)(D); (a)(5)(B); (c)(1); (c)(2); (c)(3); (c)(4); (c)(5)(B) and (h)(1) of the Act;

(b) All of the powers, functions and duties conferred upon the Board to require the furnishing of information, records and data pursuant to the provisions of subsection (c)(5)(A) of the Act, except the financial statement provided for in the first sentence of said subsection; and

(c) All of the powers, functions and duties conferred upon the Board to interpret and apply the exemptions provided for in subsection (i)(1)(A), (B), (C), (E) and (F), the definition contained in subsection (a)(7) and the provisions of subsection (i)(3) pursuant to such interpretations thereof and regulations relating thereto as may be prescribed by the Board from time to time.

The foregoing delegation of powers, functions and duties, however, shall be effective, as to each Secretary, only as to contractors and subcontractors assigned by the Board, or pursuant to its authority, to such Secretary or his Department for renegotiation.

3. Pursuant to the provisions of subsection (d)(4) of the Act, the Board hereby delegates to each Secretary the power conferred upon the Board by subsection (i)(4) of the Act to exempt, in his discretion, from some or all of the provisions of the Act, individual contracts entered into pursuant to his authority or the authority of his Department; excepting from such delegation, however, any power to exempt from any of the provisions of the Act any such contracts or subcontracts by general classes or types.

4. The powers, functions and duties hereby delegated to each Secretary may be delegated in whole or in part by him to such officers or agencies of the United States as he may designate, and he may authorize successive redelegations of such powers, functions or duties.

5. Without intending to limit the powers, functions and duties hereby delegated, nevertheless, each Secretary and each officer or agency of the United States to whom any power, function or duty is delegated or redelegated hereunder, shall exercise such power, function and duty, and all authority and discretion thereunder, in accordance with such interpretations of the Act and such regulations relating

thereto as are issued or adopted by the Board and in accordance with the principles, policies and procedures established by the Board. Where a determination with respect to the amount of excessive profits of a contractor or subcontractor is embodied in an agreement between the contractor or subcontractor and a duly authorized representative of the Board such agreement shall be conclusive according to its terms and shall not be subject to review by the Board or any representative of the Board. Nothing herein contained, however, shall be construed to limit the right of the Board to review determinations with respect to the amount of excessive profits made by order and not embodied in an agreement with the contractor or subcontractor concerned.

6. This delegation is subject to revocation or modification in whole or in part at any time.

7. The powers, functions and duties delegated hereby shall be effective immediately and shall be retroactive to the effective date of the Revenue Act of 1943.

By direction of the Board:

JOSEPH M. DODGE,
Chairman, War Contracts Price Adjustment Board.

821.2 Delegation Dated November 10, 1944, to the Secretaries.

Delegation by the War Contracts Price Adjustment Board of Exemption Authority Under the Renegotiation Act.

November 10th, 1944

1. For the purpose of this delegation, the terms "Board", "Department" and "Secretary" shall have the same meaning as when used in the Renegotiation Act of 1943 (hereinafter referred to as the "Act").

2. Pursuant to the provisions of subsection (d) (4) of the Act, the Board hereby delegates to each Secretary the power conferred upon the Board by subsection (i) (4) of the Act to exempt from some or all of the provisions of the Act, individual contracts entered into pursuant to his authority or the authority of his Department, and subcontracts under any such contracts (including subcontracts under any such contracts which are also subcontracts under contracts with other Departments); excepting from such delegation, however, any power to exempt from any of the provisions of the Act, any such contracts or subcontracts by general classes or types other than as provided in paragraph 3 hereof.

3. Pursuant to the provisions of subsection (d) (4) of the Act, the Board hereby delegates to each Secretary the power conferred upon the Board by subsection (i) (4) of the Act to exempt from some or all of the provisions of the Act any contracts or subcontracts with respect to patents or inventions, which contracts or subcontracts are license agreements, assignments, releases of, or covenants not to sue with respect to, claims for the manufacture or use of inventions, and any contracts or subcontracts for royalties charged or chargeable directly or indirectly to the United States which royalties are the subject of a royalty adjustment contract either pursuant to Public Law 768,

77th Congress, Chapter 634—2d Session, or otherwise; provided, however, that each exemption made under this paragraph 3 which relates to general classes or types of contracts or subcontracts shall be limited to the contracts or subcontracts of specific contractors or subcontractors to whom amounts are or may be paid or payable under such contracts or subcontracts.

4. The powers, functions and duties hereby delegated to a Secretary may be delegated in whole or in part by him to such officers or agencies of the United States as he may designate, and he may authorize successive redelegations of such powers, functions or duties.

5. Without intending to limit the powers, functions and duties hereby delegated, nevertheless, each Secretary and each officer or agency of the United States to whom any power, function or duty is delegated or redelegated hereunder, shall exercise such power, function and duty, and all authority and discretion thereunder, in accordance with such interpretations of the Act and such regulations relating thereto as are issued or adopted by the Board and in accordance with the principles, policies and procedures established by the Board.

6. This delegation is subject to revocation or modification in whole or in part at any time.

7. The powers, functions and duties delegated hereby shall be effective immediately and shall be retroactive to the effective date of the Revenue Act of 1943.

8. This delegation supersedes paragraph 3 of delegation dated February 26, 1944 made by the War Contracts Price Adjustment Board to the Secretaries. The authority so superseded is not withdrawn from the Secretaries but is incorporated herein. Any action under such superseded authority is not affected hereby.

By Order of the War Contracts Price Adjustment Board:

W. John Kenney
Vice Chairman

Section 3

Reserved

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Section 4

EXEMPTIONS

841. **Raw Material Exemption.** Pursuant to subsection (i) (2) of the 1943 Act the War Contracts Board has issued the following regulation concerning the exemption of contracts and subcontracts for certain products of the kind described in subsection (i) (1) (B) of the 1943 Act.

(1) The term "exempted products", as used in this regulation, shall mean any of the following products:

Aggregates including such items as washed or screened sand, gravel or crushed stone.

Alumina; aluminum sulfate; aluminum ingots and pigs.

Asphalt, natural.

Antimony ore, crude; antimony ore, concentrated; antimony metal; antimony oxide; antimony sulfide.

Arsenic, crude; arsenic powder; arsenious oxide (white arsenic)

Asbestos rock; asbestos fibre.

Barytes, crude crushed.

Bauxite, crude; calcined or dried bauxite; bauxite abrasive grains.

Bentonite, dried, crushed, granulated and pulverized.

Beryl ore and concentrates; beryllium oxide; beryllium metal; beryllium master alloys.

Bismuth metal.

Borax.

Cadmium flue dust; cadmium oxide; cadmium balls and slabs.

China clay; kaolin; fire clay; brick and tile made from clays other than kaolin, china and fire clay.

Chlorine and hydrogen produced directly by electrolysis of salt brine.

Chromium ore and ferrochrome; chromite not processed beyond the form or state suitable for use as a refractory; bichromates.

Coal, prepared; run-of-mine coal.

Cobalt oxide; cobalt anodes, shot and rondelles.

Columbium ore and concentrates; columbium oxide; ferrocolumbium.

Copper ore, crude; copper ore, concentrated; copper matte; blister copper; copper billets, cathodes, cakes, ingots, ingot bars, powder, slabs and wirebars.

Corundum ore and concentrates; corundum grain.

Cryolite ore and concentrates.

Diaspore; diaspore brick.

Diatomaceous silica, lump, block, brick and powder.

Dolomite; crushed dolomite.

Feldspar, crude and ground.

Ferrosilicon.

Fluorspar ore; fluorspar fluxing gravel; lump ceramic ground fluorspar; acid grades of fluorspar.

Fuller's earth.

Gas, natural, not processed or treated further than the processing or treating customarily occurring at or near the well.

Graphite ore and concentrates; flake graphite; graphite fines, lump and chip; graphite powder.

Gypsum, crude; calcined gypsum.

Indium metal.

Industrial diamonds.

Iridium metal, including ingot and powder.

Iron ore, crude; pig iron.

Kyanite ore and concentrates; kyanite brick.

Lead ore; refined lead bars, ingots and pigs; antimonial lead bars, ingots and pigs.

Limestone; crushed limestone.

Magnesite; dead burned magnesite.

Magnesium-bearing minerals, including brucite; magnesium oxide; magnesium chloride; metallic magnesium, pigs and ingots.

Mercury ore; mercury metal.

Manganese ore; ferromanganese, including spiegeleisen; silicomanganese.

Mica, crude, hand-cobbed; block mica; sheet mica, including splittings; wet or dry ground mica.

Molybdenum ore and concentrates; molybdenum oxide; calcium molybdate; ferromolybdenum.

Monel ore; monel matte; monel ingots, pigs, and shot, produced from monel matte.

Natural gasoline; casinghead gasoline; residue gas.

Nickel ore and concentrates; nickel matte; nickel oxide; nickel ingots, cathodes and shot.

Oil, crude, not processed or treated further than the processing or treating customarily occurring at or near the well.

Osmium metal, including ingot and powder.

Palladium metal, including ingot and powder.

Phosphate rock; elemental phosphorus; ferrophosphorus; phosphorus pentoxide and phosphoric acid derived directly by treatment of phosphate rock; superphosphate.

Platinum ore and concentrates; platinum metal, including ingot and powder.

Pumice, lump.

Quartz crystal, raw.

Radium bromide; radium sulfate; radium gas.

Rhodium metal, including ingot and powder.

Ruthenium metal, including ingot and powder.

Salt, rock; evaporated salt; soda ash, ammonia and electrolytic caustic soda and bicarbonate of soda when derived directly by treatment of brine.

Sea shells; oyster shells; clam and reef shells.

Selenium metal.

Silver, refined, including bars, shot, powder and grains.

Sodium aluminate.

Stone, rough dimension.

Sulfur, crude.

Sulfuric acid; oleum (other than sulfuric acid or oleum produced from crude sulfur or any other product having an industrial use).

Standing timber, logs, logs sawed into length, and logs with or without bark.

Talc, crude, ground and sawed.

Tantalum ore and concentrates; tantalum double fluoride.

Tellurium metal.

Tin ore and concentrates; refined pig tin.

Titanium-bearing ores and concentrates, including ilmenite and rutile; titanium oxide; ferrotitanium; ferro carbon titanium.

Tungsten ore and concentrates; sodium tungstate; ferrotungsten; tungsten metal, including powder; tungstic oxide; tungstic acid.

Uranium ores and concentrates; uranium oxide.

Vanadium ores and concentrates; sodium vanadate; vanadium pentoxide; ferrovanadium.

Whiting; chalk lump.

Zeolites derived from Glauconite.

Zinc ores and concentrates; zinc anodes, bars, oxide, powder and slabs.

Zirconium ores and concentrates.

(2) Subject to the provisions of paragraph 3 hereof, it is determined that each of the exempted products is "the product of a mine, oil or gas well, or other mineral or natural deposit, or timber, which has not been processed, refined, or treated beyond the first form or state suitable for industrial use" within subsection (i) (1) (B) of the

Any other perishable food of a similar nature whch may be determined from time to time by any of the Departments to be of the same general character as the items specifically set forth on the above list, provided, however, that any items so added shall be reported to the Secretary of the War Contracts Price Adjustment Board.

844. List of Exempted Agricultural Commodities.

Determination of the War Contracts Price Adjustment Board of the exemption from renegotiation of contracts and subcontracts for agricultural commodities under Section 403 (i) (1) (C) of the Renegotiation Act of 1943.

1. Pursuant to the authority conferred upon the War Contracts Price Adjustment Board by Section 403 (i) (2) of the Renegotiation Act of 1943, the Board hereby determines that under subsection (i) (1) (C) of such section, relating to the exemption of contracts or subcontracts for agricultural commodities, the form or state indicated in the following list, is the last form or state at which the exemption applies:

Agricultural Commodity	*Last Form or State at Which Exemption Is to Apply*
Beans and peas, dry	Threshed
Beeswax	In the comb, or in bulk (not packed)
Berries, edible	Fresh
Cinchona bark	As bark (unprocessed)
Coffee	Beans (green)
Corn	As grain (shelled)
Cotton	Ginned (in the bale)
Cottonseed	Unprocessed (as they come from the gin)
Cream, fluid	As sold from farms (not pasteurized)
Drugs (botanical)	Crude (unground, unprocessed, unstandardized, unpurified) as customarily sold by the basic producer
Eggs	In the shell (raw)
Fiber flax straw	Deseeded (baled or unbaled)
Flaxseed (linseed)	As seed (unprocessed)
Fruits, edible	Fresh
Gum opium	As gum in its natural state
Hay	Baled or unbaled
Hemp fiber	In bales
Honey	Crude or "country run"
Jute and sisal fiber	In bales
Livestock	On the hoof
Milk, raw fluid	As sold from farms (not pasteurized)
Peanuts	In the shell (raw)
Pine gum	Not distilled or purified
Poultry	Alive
Rice	Rough, unpolished (as it comes from the thresher)
Sugar beets	As beets
Sugar cane	As cane
Tobacco	Not processed beyond the form or state at which farmers ordinarily sell it
Tree nuts, edible	In the shell (raw)
Vegetables	Fresh
Vegetable seeds	Not processed beyond the form or state at which they may be used as seeds
Wheat, rye, oats and barley	As threshed grain
Wool	In the grease (as clipped from live animals)

2. This determination is made under the principles set forth in paragraph 344.2 of the Renegotiation Regulations including subdivision (2) (b) thereof.

3. This determination applies to all receipts or accruals under any contract or subcontract for the commodities listed in paragraph 1 of this Regulation regardless of the date when such contract or subcontract was made.

4. This Regulation may be amended from time to time, revising, amending or supplementing the list of exempted commodities contained in paragraph 1 hereof.

JOSEPH M. DODGE
Chairman,
War Contracts Price Adjustment Board

845. Standard Commercial Article Exemption.

(1) Pursuant to the authority given to the War Contracts Price Adjustment Board by subsection (i) (4) of the Renegotiation Act of 1943, the Board, under the provisions of subsection (i) (4) (D) of the 1943 Act, has exempted from renegotiation amounts received or accrued during fiscal years ending after June 30, 1943 and prior to July 1, 1944 under contracts or subcontracts for the making or furnishing of the following articles:

(a) Iron scrap and steel scrap; non-ferrous metal scrap; woolen waste, including woolen rags and clips, new and old; scrap rubber; waste paper; cotton or linen rags, including old bagging and old rope; and textile waste; sold by dealers or brokers.

Comment: The exemption of these articles as standard commercial articles applies only to dealers and brokers in these articles and is not to be construed as affecting, in any way, users of these articles (in particular, manufacturers who use these articles), nor does it affect manufacturers who may produce and sell these articles as a by-product in the course of their operation. Neither does the exemption cover sales of these articles in any form other than as scrap or waste.)

(b) Refined sugar (cane or beet);
(c) Textile bags (made of burlap or cotton);
(d) Leather transmission belting, mechanical and textile leathers and mechanical leather packings.
(e) Paper of the following types and grades, sold by paper mills: Groundwood and free sheet uncoated and coated book papers (including but not limited to free sheet and groundwood offset, envelope and tablet papers); Mimeograph and duplicating (both groundwood and free sheet); Bond, writing and ledger, including opaque circular; Manifold and onion skin; Cover and text; Index and Bristol; Map paper; Post card paper; Blue print base stock.
(f) Paper and paper products sold by merchants.

(Comment: This exemption does not apply to sales of paper or paper products which have been manufactured, converted or processed by the seller or by any person under the control of or controlling or under common control with the seller.)

(g) Ready mixed concrete.
(h) Portland cement.
(i) Wheat flour.

(Comment: This exemption applies only to sales by the person milling the flour. Wheat flour includes granular flour and farina; whole wheat flour; products of the milling of durum wheat including whole durum flour and semolina; and blends of the foregoing. Bleached, bromated, enriched, phosphated and self-rising wheat flour are considered flour for purposes of this exemption.)

(j) Quick and hydrated lime.
(k) Dead-burned dolomite.

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